



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

TO: The Honorable the Members of the Board of Regents

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

SUBJECT: Proposed Addition of Section 136.7 of the Regulations of the Commissioner Relating Self-Administration of Certain Medications by Students

DATE: September 8, 2015

AUTHORIZATION(S): *Richard P. Tranter* *MaryEllen Eis*

SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents adopt, as a permanent rule, the proposed section 136.7 of the Commissioner's Regulations to prescribe standards for:

1. the carrying and self-administration of inhaled rescue medications, epinephrine auto-injectors, and insulin by students attending public schools and boards of cooperative educational services (BOCES);
2. permitting both public and nonpublic schools to authorize a licensed registered professional nurse, nurse practitioner, physician assistant, or physician to train unlicensed school personnel to inject prescribed glucagon or epinephrine auto-injectors in emergency situations, where an appropriate licensed health professional is not available, to students who have a written parent/guardian consent; and
3. standardizing the care authorized to be provided by duly licensed health professionals to students diagnosed with diabetes or allergies?

Reason(s) for Consideration

Required by statute (Chapter 423 of the Laws of 2014).

Proposed Handling

This item will come before the full Board for action at the September 2015 Regents meeting. In addition, a second emergency adoption is necessary to ensure the emergency rule adopted at the June 2015 Regents meeting remains continuously in effect until the effective date of its adoption as a permanent rule. A statement of the facts and circumstances which necessitate emergency action is attached.

Procedural History

The proposed rule was discussed by the P-12 Education Committee at the April 2015 Regents meeting. A Notice of Proposed Rule Making was published in the State Register on April 8, 2015.

The proposed amendment was substantially revised in response to public comment and adopted as an emergency action at the June 2015 Regents meeting, effective July 1, 2015. A Notice of Emergency Adoption and Revised Rule Making was published in the State Register on July 15, 2015.

A copy of the proposed rule and an Assessment of Public Comment are attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

Chapter 423 of the Laws of 2014 added sections 902-a, 902-b, 916, 916-a, 916-b, and 921 to the Education Law, effective July 1, 2015, to require that school districts and BOCES permit students diagnosed with asthma or other respiratory conditions, allergies, and diabetes to carry and self-administer during the school day on school property and at any school function:

1. prescribed inhaled respiratory rescue medications;
2. epinephrine auto-injectors; and
3. insulin along with carrying glucagon, necessary supplies and equipment to manage their diabetes including blood glucose, or ketone testing.

Students must provide the school with written consent from the parent/guardian, along with written permission of a physician or other duly authorized health care provider attesting to the student's diagnosis, and that the student has demonstrated that he or she can self-administer the medication effectively.

Additionally, upon written request of the parent/guardian, the school shall allow the student to maintain extra medication and related supplies and equipment provided

by the parent/guardian in the care and custody of a licensed nurse, or other appropriate duly licensed health professional. Schools will not be required to employ such health professionals solely for the purpose of taking custody of the extra medication, supplies and/or equipment.

For the treatment of students with diabetes or allergies, the statute specifies that duly licensed nurses, nurse practitioners, physician assistants, and physicians are authorized to administer prescribed epinephrine, calculate prescribed insulin dosages, administer prescribed insulin, program the prescribed insulin pump, refill the reservoir of the insulin pump, change the infusion site, inject prescribed insulin, teach an unlicensed person to administer glucagon to an individual, and perform other authorized services pursuant to their scope of practice to students who have both a provider order and written parent/guardian consent for such.

Finally, the statute permits school districts, BOCES, and nonpublic schools to authorize, but are not obligated to have, licensed registered professional nurses, nurse practitioners, physician assistants, and physicians to train unlicensed school personnel to inject prescribed glucagon or epinephrine auto-injectors in emergency situations, where an appropriate licensed health professional is not available, to students with written parent/guardian consent. The training is to be provided in a form and manner prescribed by the Commissioner in regulation.

The proposed rule prescribes standards for the carrying and self-administration of the specified medications by students, maintenance of extra medication provided by the parent/guardian, standards for appropriate licensed health professionals to train unlicensed school staff to administer prescribed epinephrine auto-injector or glucagon to a student, and the treatment of students diagnosed with diabetes or allergies by appropriate duly licensed health professionals.

Revisions to Proposed Amendment

The proposed amendment has been revised in response to public comment to make technical corrections to clarify the text, consistent with the statute.

- Section 136.7(d)(1) has been amended to include the following underlined language:

“Each board of education or trustees of each school district and each board of cooperative educational services shall allow a student to carry and self-administer their prescribed insulin through an appropriate medication delivery device, carry glucagon...”

- Section 136.7(d)(3) has been amended to include the following underlined language:

“(3) Upon written request of a parent or person in parental relation, the school district or board of cooperative educational service shall allow the student to maintain extra insulin, insulin delivery system, glucagon, blood glucose meter and related supplies to treat such student’s diabetes provided by the parent or person in parental relation in the care and custody of a licensed nurse, nurse practitioner, physician assistant, or physician employed by such district or board of cooperative education services, and shall be readily accessible to such pupil.”

Recommendation

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

VOTED: That section 136.7 of the Regulations of the Commissioner of Education is added as submitted, effective October 7, 2015; and it is further

VOTED: That section 136.7 of the Regulations of the Commissioner of Education is added as submitted, effective September 28, 2015, as an emergency action upon a finding of the Board of Regents that such action is necessary for the preservation of the public health and general welfare in order to ensure that the emergency rule adopted at the June 2015 Regents meeting remains continuously in effect until the effective date of its adoption as a permanent rule.

Timetable for Implementation

The proposed rule was adopted as an emergency measure at the June 15-16, 2015 Regents meeting, effective July 1, 2015. The June emergency rule will expire on September 27, 2015. If adopted at the September 2015 Regents meeting, the second emergency rule will take effect on September 28, 2015 and the permanent rule will become effective on October 7, 2015.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 207, 305 and 921 and Chapter 423 of the Laws of 2014

Section 136.7 of the Regulations of the Commissioner of Education is added, effective October 7, 2015, as follows:

Section 136.7 Self-administration of Certain Medications by Students

(a) Definitions. As used in this section:

(1) Inhaled rescue medications means a solution of a drug or a combination of drugs administered to the respiratory passages via inhalation for immediate alleviation of respiratory distress for persons with asthma or other respiratory diseases. Such medication(s) are delivered by devices approved by the United States Food and Drug Administration and include metered dose inhalers, nebulizers, and other similar devices for the delivery of respiratory medications to the respiratory passage.

(2) Epinephrine auto-injector means an automated injection delivery device, approved by the United States Food and Drug Administration, for injecting a measured dose of the drug epinephrine.

(3) Ketone test means a blood test utilizing a drop of blood on a blood ketone test strip and a blood glucose meter or urine dipstick test utilizing a urine ketone test strip placed into the urine to determine the number of ketones present in either the blood or urine.

(4) Blood glucose test means a blood test utilizing a drop of blood on a blood glucose test strip, and a blood glucose meter to determine the blood glucose level.

(5) Insulin means insulin hormone and similar proteins used as a medication to treat diabetes.

(6) Glucagon means a hormone medication that raises the level of glucose in the blood.

(7) Duly authorized health care provider means a licensed health professional who is authorized to diagnose medical conditions and prescribe medications and treatments in accordance with his/her respective scope of practice under Title VIII of the Education Law, including, but not limited to, a physician, physician assistant, and nurse practitioner.

(8) Cumulative health record means the record of health information maintained by the school or board of cooperative educational services for each student, which shall be kept confidential consistent with the Federal Family Education Rights and Privacy Act (FERPA) and any other applicable Federal and State laws.

(9) Emergency action plan means a care plan written by a duly authorized health care provider, or the director of school health services or a school nurse which specifies a student's health care needs along with direction for staff to take in the event of an emergency where a licensed health professional is not present.

(10) Diabetes Management Plan means a care plan developed by a duly authorized health care provider, school health personnel, and the parent or person in parental relation that specifies in detail how the student is to manage diabetes at school including, but not limited to, detailed information for treatment of hypoglycemia and hyperglycemia by school personnel if the student becomes unable to do so

independently, blood glucose range, and insulin coverage scale or correction factor orders for use by a licensed health professional if one is available.

(11) School day means any day, including a partial day, that students are in attendance at school or at a facility maintained by a board of cooperative educational services for instructional purposes.

(12) School property means in or within any building, structure, athletic playing field, playground, parking lot, or land contained within the real property boundary line of a public elementary or secondary school or a facility maintained by a board of cooperative educational services for instructional purposes, or in or on a school bus, as defined in Vehicle and Traffic Law section 142.

(13) School function means a school district or board of cooperative educational services sponsored extra-curricular event or activity regardless of where such event or activity takes place, including, but not limited to, an event or activity that may take place in another state.

(b) Students Affected with Asthma or Another Respiratory Disease. (1) Each board of education or trustees of each school district and each board of cooperative educational services shall allow a student to carry and self-administer their prescribed inhaled rescue medication during the school day, on school property and at any school function, if the student provides the school district and/or board of cooperative educational services, as applicable, with:

(i) written consent from the parent or person in parental relation; and

(ii) written permission (also referred to as an order) and an attestation from a duly authorized health care provider confirming:

(a) that the student has a diagnosis of asthma or other respiratory disease for which inhaled rescue medications are prescribed to alleviate respiratory symptoms or to prevent the onset of exercise induced asthma;

(b) the student has demonstrated that he or she can self-administer the prescribed inhaled rescue medication effectively; and

(c) the expiration date of the order, the name of the prescribed rescue medication, the dose the student is to self-administer, times when medication is to be self-administered by the student, and the circumstances which may warrant the use of the medication.

(2) A record of such written consents shall be maintained in the student's cumulative health record.

(3) Upon written request of a parent or person in parental relation, the school district or board of cooperative educational services, as applicable, shall allow the student to maintain an extra inhaled rescue medication in the care and custody of a licensed nurse, nurse practitioner, physician assistant, or physician employed by such district or board of cooperative educational services.

(i) Nothing in this section shall require a school district or board of cooperative educational services to retain a licensed nurse, nurse practitioner, physician assistant, or physician solely for the purpose of taking custody of such extra inhaled rescue medication; or require that such licensed health professionals be available at all times in a school building for the purpose of taking custody of the inhaled rescue medication.

(ii) Such inhaled rescue medication provided by the parent or person in parental relation shall be made available to the student as needed in accordance with school policy and the written permission provided by the duly authorized health care provider.

(4) Each student with asthma or another respiratory disease who is permitted, under this section to self-administer his or her prescribed inhaled rescue medication should have an emergency action plan on file with the school district or board of cooperative educational services.

(c) Students with Allergies. (1) Each board of education or trustees of each school district and each board of cooperative educational services shall allow a student to carry and self-administer their prescribed epinephrine auto injector during the school day, on school property and at any school function, if the student provides the school with:

(i) written consent from the parent or person in parental relation; and

(ii) written permission(also referred to as an order) and an attestation from a duly authorized health care provider confirming:

(a) that the student has a diagnosis of an allergy for which an epinephrine auto injector is needed for the emergency treatment of allergic reactions;

(b) the student has demonstrated that he or she can self-administer the prescribed epinephrine auto injector effectively; and

(c) the expiration date of the order, the name of the prescribed medicine, the dose the student is to self-administer and the circumstances which may warrant the use of the medication.

(2) A record of such written consents shall be maintained in the student's cumulative health record.

(3) Upon written request of a parent or person in parental relation the school district or board of cooperative educational services, as applicable, shall allow the student to maintain an extra epinephrine auto injector in the care and custody of a licensed nurse, nurse practitioner, physician assistant, or physician employed by such district or board of cooperative educational services.

(i) Nothing in this section shall require a school district or board of cooperative educational services to retain a licensed nurse, nurse practitioner, physician assistant, or physician solely for the purpose of taking custody of such extra epinephrine auto injector; or require that such licensed health professionals be available at all times in a school building for the purpose of taking custody of the epinephrine auto injector.

(ii) Such epinephrine auto injector provided by the parent or person in parental relation shall be made available to the student as needed in accordance with school policy and the orders prescribed by the duly authorized health care provider.

(4) Each student with allergies who is permitted under this section to self-administer his or her prescribed epinephrine auto injector should have an emergency action plan on file with the school district or board of cooperative educational services.

(5) Licensed nurses, nurse practitioners, physician assistants, or physicians employed by schools or boards of cooperative educational services are authorized to administer prescribed epinephrine pursuant to the scope of practice of the licensed individual under Title VIII of the Education Law, to students diagnosed with an allergy by

a physician or other duly authorized health care provider and who are permitted under this section to self-administer their prescribed epinephrine auto injector.

(6) Separate from the authority provided by section 136.6 of this Part, for students authorized to self-administer their prescribed epinephrine pursuant to this section, the board of education or trustees of each school district and board of cooperative educational services and nonpublic schools are authorized, but not required, to have licensed registered professional nurses, nurse practitioners, physician assistants, and physicians train unlicensed school personnel to administer prescribed epinephrine auto-injectors in emergency situations, where an appropriately licensed health professional is not available, to the students authorized to self-administer their prescribed epinephrine auto injector pursuant to this section. Training by the licensed health professional shall be provided in a competent manner and in accordance with subdivision (f) of this section.

(d) Students with Diabetes. (1) Each board of education or trustees of each school district and each board of cooperative educational services shall allow a student to carry and self-administer their prescribed insulin through an appropriate medication delivery device, carry glucagon, and carry and use equipment and supplies necessary to check blood glucose and/or ketone levels during the school day, on school property and at any school function, if the student provides the school with:

(i) written consent from the parent or person in parental relation; and

(ii) written permission(also referred to as an order) and an attestation from a duly authorized health care provider confirming:

(a) that the student has a diagnosis of diabetes for which insulin and glucagon through appropriate medication delivery devices, and the use of equipment and supplies to check blood glucose and/or ketone levels are necessary;

(b) the student has demonstrated he or she can self-administer the prescribed insulin effectively, can self-check glucose or ketone levels independently, and can independently follow prescribed treatment orders; and

(c) the expiration date of the order, the name of the prescribed insulin or glucagon, the type of insulin delivery system, the dose or dose range of insulin the student is to self-administer, times when the insulin is to be self-administered by the student, the dose of glucagon that is to be administered, and the circumstances which may warrant the administration of the insulin by the student or the administration of glucagon to the student. The written permission must also identify the prescribed blood glucose and/or ketone test, the times testing is to be done, and any circumstances which warrant checking a blood glucose and/or ketone level.

(2) A written diabetes management plan shall be provided. A record of such written consents shall be maintained in the student's cumulative health record.

(3) Upon written request of a parent or person in parental relation, the school district or board of cooperative educational services shall allow the student to maintain extra insulin, insulin delivery system, glucagon, blood glucose meter and related supplies to treat such student's diabetes provided by the parent or person in parental relation in the care and custody of a licensed nurse, nurse practitioner, physician assistant, or physician employed by such district or board of cooperative educational services, and shall be readily accessible to such pupil.

(i) Nothing in this section shall require a school district or board of cooperative educational services to retain a licensed nurse, nurse practitioner, physician assistant, or physician solely for the purpose of taking custody of extra insulin, insulin delivery system, glucagon, blood glucose meter and related supplies to treat such student's diabetes; or require that such licensed health professionals be available at all times in a school building for the purpose of taking custody of insulin, insulin delivery system, glucagon, blood glucose meter and related supplies to treat such student's diabetes.

(ii) Such insulin, insulin delivery system, glucagon, blood glucose meter and related supplies to treat such student's diabetes provided by the parent or person in parental relation, shall be made available to the student as needed in accordance with school policy and the orders prescribed by the duly authorized health care provider.

(4) Students with diabetes may also carry food, oral glucose, or other similar substances necessary to treat hypoglycemia pursuant to district policy, provided such district policy shall not unreasonably interfere with a student's ability to treat hypoglycemia.

(5) Each student with diabetes who is permitted under this section to self-administer their prescribed insulin, carry glucagon, and carry and use equipment and supplies necessary to check blood glucose and/or ketone levels during the school day should have an emergency action plan on file with the school district or board of cooperative educational services.

(6) Licensed nurses, nurse practitioners, physician assistants, or physicians employed by school districts or boards of cooperative educational services are authorized to calculate prescribed insulin dosages, administer prescribed insulin,

program the prescribed insulin pump, refill the reservoir in the insulin pump, change the infusion site, inject prescribed glucagon, teach an unlicensed person to administer glucagon to an individual, and perform other authorized services pursuant to the scope of practice of the licensed individual under Title VIII of the Education Law, to students diagnosed with diabetes by a physician or other duly authorized health care provider and who are permitted under this section to self-administer their prescribed insulin and carry glucagon, and carry and use equipment and supplies necessary to check blood glucose and/or ketone levels during the school day. Nothing in this section shall authorize unlicensed persons to perform these services except as otherwise permitted by Education Law section 921.

(7) The board of each school district and board of cooperative educational services and nonpublic schools are authorized, but not required to have licensed registered professional nurses, nurse practitioners, physician assistants, and physicians train unlicensed school personnel to administer prescribed glucagon in emergency situations where an appropriately licensed health care professional is not available, to students who are permitted under this section to self-administer their prescribed insulin and carry glucagon, and carry and use equipment and supplies necessary to check blood glucose and/or ketone levels during the school day. Training by the licensed health professional is to be provided in a competent manner and in accordance with subdivision (f) of this section.

(e) In accordance with Title VIII of the Education Law, only licensed health professionals whose scope of practice permits may administer medication to a student in a school setting unless otherwise permitted by Education Law sections 6908, 907,

921 (as added by Chapter 423 of the Laws of 2014) and 921 (as added by Chapter 424 of the Laws of 2014).

(f) Training of Unlicensed Personnel to Administer Certain Medications to specific students.

(1) Prescribed Epinephrine Auto-Injectors. Unlicensed school personnel employed by school districts, boards of cooperative education services, and non-public schools must complete an annual course of training regarding the administration of prescribed epinephrine auto-injectors to a student. Such training must be provided and documented by an authorized licensed health professional as described in subdivision (c) of this section. Components of such training shall include, but not be limited to:

(i) Identification of the specific allergen(s) of the student(s), including review of each student's emergency action plan, if available;

(ii) signs and symptoms of a severe allergic reaction warranting administration of epinephrine;

(iii) how to access emergency services per school policy;

(iv) the steps for administering the prescribed epinephrine auto-injector.

(v) observation of the trainee using an epinephrine auto-injector training device;

(vi) steps for providing ongoing care while waiting for emergency services;

(vii) notification of appropriate school personnel ; and

(viii) methods of safely storing, handling, and disposing of epinephrine auto-injectors.

(2) Training of Unlicensed Personnel to Administer Prescribed Glucagon.

Unlicensed school personnel employed by school districts, boards of cooperative

education services, and non-public schools must complete an annual course of training regarding the administration of prescribed glucagon to a student. Such training must be provided and documented by an authorized licensed health professional as described in section (d) of this section. Components of such training shall include, but not be limited to:

(i) overview of diabetes and hypoglycemia utilizing the Department of Health approved webinar on glucagon administration;

(ii) review of the student's emergency action plan, if available, including treatment of mild or moderate hypoglycemia;

(iii) signs and symptoms of a severe hypoglycemia warranting administration of glucagon;

(iv) how to access emergency services per school policy;

(v) the steps for mixing and administering the prescribed glucagon;

(vi) observation of the trainee using a glucagon training device;

(vii) steps for providing ongoing care while waiting for emergency services;

(viii) notification of appropriate school personnel; and

(ix) methods of safely storing, handling, and disposing of glucagon and used needles and syringes.

8 NYCRR §136.7

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Emergency Adoption and Revised Rule Making in the State Register on July 15, 2015, the State Education Department received the following comments:

1. COMMENT:

Schools should employ professionally prepared Registered Nurses, to conduct and supervise school health programs which address the variety of health problems experienced by school children. A formula based approach is recommended with minimum ratios of nurses to students depending on the needs of the student population as follows: 1:750 for students in the general population, 1:225 in student populations requiring professional school nursing services or interventions, 1:125 in student populations with complex health care needs.

DEPARTMENT RESPONSE:

The language in 136.7(b)(3)(i), (c)(3)(i), (d)(3)(i) reflects the language in the statute upon which the proposed rule is based [see Chapter 423 of the Laws of 2014; more specifically Education Law §§916(1), 916-a(1), 916-b(1)]. While the Department agrees that best practice would encourage each school to provide a school nurse to address the needs of students with chronic health conditions, such best practice is not specifically required by Chapter 423 of the Laws of 2014 to be codified in regulation, and is more appropriately left to guidance. The Department may consider issuing guidance as to what is best practice.

2. COMMENT:

Only a licensed Registered Professional Nurse (RN) should have the authority to delegate the administration of medications in school to unlicensed personnel. Such individuals should only administer medications with appropriate and adequate training, supervision and a performance evaluation conducted by the RN.

DEPARTMENT RESPONSE:

The proposed rule is consistent with Chapter 423 of the Laws of 2014, which provides that boards of education or trustees of each school district and board of cooperative educational services (BOCES) and nonpublic schools are authorized, but not obligated, to permit licensed registered professional nurses, nurse practitioners, physician assistants, and physicians to train unlicensed school personnel to inject prescribed glucagon or epinephrine auto injectors in emergency situations, **where an appropriately licensed health professional is not available**, to pupils who have the written permission of a physician or other duly authorized health care provider along with written parental consent. It is the licensed health professional who provides the training and assesses whether the trained volunteer demonstrates sufficient proficiency in order to be permitted to administer the medication.

3. COMMENT:

The rule should include a requirement that each nurse, or person authorized to administer asthma medications in schools, receive training in airway management and the use of inhalers consistent with nationally recognized standards.

DEPARTMENT RESPONSE:

The language in 136.7(b)(3)(i), (c)(3)(i), (d)(3)(i) reflects the language in the statute upon which the proposed rule is based [see Chapter 423 of the Laws of 2014; more specifically Education Law §§916(1), 916-a(1), 916-b(1)]. While the Department agrees that best practice would be to require training in airway management and use of inhalers, such best practice is not specifically required by Chapter 423 of the Laws of 2014 to be codified in regulation, and is more appropriately left to guidance. The Department will consider issuing guidance as to what is best practice.

4. COMMENT:

An RN must be available to immediately assess the student and institute further actions post emergency medication administration. In all cases where an emergency medication is administered further treatment and assessment should follow according to industry standards.

DEPARTMENT RESPONSE:

The proposed rule is consistent with Chapter 423 of the Laws of 2014, which provides that boards of education or trustees of each school district and board of cooperative educational services (BOCES) and nonpublic schools are authorized, but not obligated, to permit licensed registered professional nurses, nurse practitioners, physician assistants, and physicians to train unlicensed school personnel to inject prescribed glucagon or epinephrine auto injectors in emergency situations, **where an appropriately licensed health professional is not available**, to pupils who have the written permission of a physician or other duly authorized health care provider along with written parental consent. While the Department agrees that procedures for follow up care following emergency administration of medication should conform to industry

standards, such best practice is not specifically required by Chapter 423 of the Laws of 2014. The Department will consider issuing guidance as to what is best practice in the context of follow-up care in a school setting.

8 NYCRR §136.7

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE EMERGENCY ACTION

The proposed rule is necessary to implement Education Law sections 916, 916-a, 916-b, 902-a, 902-b and 921, as added and amended by Chapter 423 of the Laws of 2014. The proposed rule sets forth standards for the self-administration by students of prescribed inhaled rescue medications and epinephrine auto-injectors, and standards for allowing students to carry and self-administer prescribed insulin, carry glucagon, and carry and use equipment and supplies necessary to check blood glucose and/or ketone levels, during the school day on school property and at a school function, including requirements for the written consent of the parent or person in parental relation and written permission (also referred to as an order) and an attestation from a duly authorized health care provider providing certain specified information including the expiration date of the order, name and dose of prescribed medication, times when medication is to be self-administered, and circumstances which may warrant the use of the medication. The proposed rule is also necessary to establish standards for the training of unlicensed school personnel to administer prescribed epinephrine auto-injectors and glucagon to specific students under specified conditions, consistent with Chapter 423 of the Laws of 2014, for those school districts and BOCES that choose to provide such training.

Since publication of a Notice of Proposed Rule Making in the State Register on April 8, 2015, the proposed amendment was been substantially revised in response to public comment and adopted as an emergency action at the June 15-16, 2015 Regents meeting, effective July 1, 2015. A Notice of Emergency Adoption and Revised Rule Making was published in the State Register on July 15, 2015.

The proposed amendment has now been adopted as a permanent rule at the September 16-17, 2015 Regents meeting. Pursuant to SAPA section 203(1), the earliest effective date of the proposed rule is October 7, 2015, the date a Notice of Adoption will be published in the State Register. However, the June emergency rule will expire on September 27, 2015, 90 days after its filing with the Department of State on June 30, 2015. A lapse in the emergency rule could result in potential health hazards to the extent it would disrupt or inhibit the ability of students to self-administer prescribed inhaled rescue medications, prescribed insulin and glucagon during the school day on school property and at a school function, and disrupt or inhibit the ability of unlicensed school personnel to administer prescribed epinephrine auto-injectors and glucagon to specific students under specified conditions, consistent with Chapter 423 of the Laws of 2014.

Emergency action is therefore necessary for the preservation of the public health and general welfare to ensure that the amendment adopted by emergency action at the June 2015 Regents meeting and adopted as a permanent rule at the September 2015 Regents meeting, remains continuously in effect until the effective date of its permanent adoption.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 207, 305 and 921 and Chapter 423 of the Laws of 2014

Section 136.7 of the Regulations of the Commissioner of Education is added, effective September 28, 2015, as follows:

Section 136.7 Self-administration of Certain Medications by Students

(a) Definitions. As used in this section:

(1) Inhaled rescue medications means a solution of a drug or a combination of drugs administered to the respiratory passages via inhalation for immediate alleviation of respiratory distress for persons with asthma or other respiratory diseases. Such medication(s) are delivered by devices approved by the United States Food and Drug Administration and include metered dose inhalers, nebulizers, and other similar devices for the delivery of respiratory medications to the respiratory passage.

(2) Epinephrine auto-injector means an automated injection delivery device, approved by the United States Food and Drug Administration, for injecting a measured dose of the drug epinephrine.

(3) Ketone test means a blood test utilizing a drop of blood on a blood ketone test strip and a blood glucose meter or urine dipstick test utilizing a urine ketone test strip placed into the urine to determine the number of ketones present in either the blood or urine.

(4) Blood glucose test means a blood test utilizing a drop of blood on a blood glucose test strip, and a blood glucose meter to determine the blood glucose level.

(5) Insulin means insulin hormone and similar proteins used as a medication to treat diabetes.

(6) Glucagon means a hormone medication that raises the level of glucose in the blood.

(7) Duly authorized health care provider means a licensed health professional who is authorized to diagnose medical conditions and prescribe medications and treatments in accordance with his/her respective scope of practice under Title VIII of the Education Law, including, but not limited to, a physician, physician assistant, and nurse practitioner.

(8) Cumulative health record means the record of health information maintained by the school or board of cooperative educational services for each student, which shall be kept confidential consistent with the Federal Family Education Rights and Privacy Act (FERPA) and any other applicable Federal and State laws.

(9) Emergency action plan means a care plan written by a duly authorized health care provider, or the director of school health services or a school nurse which specifies a student's health care needs along with direction for staff to take in the event of an emergency where a licensed health professional is not present.

(10) Diabetes Management Plan means a care plan developed by a duly authorized health care provider, school health personnel, and the parent or person in parental relation that specifies in detail how the student is to manage diabetes at school including, but not limited to, detailed information for treatment of hypoglycemia and hyperglycemia by school personnel if the student becomes unable to do so

independently, blood glucose range, and insulin coverage scale or correction factor orders for use by a licensed health professional if one is available.

(11) School day means any day, including a partial day, that students are in attendance at school or at a facility maintained by a board of cooperative educational services for instructional purposes.

(12) School property means in or within any building, structure, athletic playing field, playground, parking lot, or land contained within the real property boundary line of a public elementary or secondary school or a facility maintained by a board of cooperative educational services for instructional purposes, or in or on a school bus, as defined in Vehicle and Traffic Law section 142.

(13) School function means a school district or board of cooperative educational services sponsored extra-curricular event or activity regardless of where such event or activity takes place, including, but not limited to, an event or activity that may take place in another state.

(b) Students Affected with Asthma or Another Respiratory Disease. (1) Each board of education or trustees of each school district and each board of cooperative educational services shall allow a student to carry and self-administer their prescribed inhaled rescue medication during the school day, on school property and at any school function, if the student provides the school district and/or board of cooperative educational services, as applicable, with:

(i) written consent from the parent or person in parental relation; and

(ii) written permission (also referred to as an order) and an attestation from a duly authorized health care provider confirming:

(a) that the student has a diagnosis of asthma or other respiratory disease for which inhaled rescue medications are prescribed to alleviate respiratory symptoms or to prevent the onset of exercise induced asthma;

(b) the student has demonstrated that he or she can self-administer the prescribed inhaled rescue medication effectively; and

(c) the expiration date of the order, the name of the prescribed rescue medication, the dose the student is to self-administer, times when medication is to be self-administered by the student, and the circumstances which may warrant the use of the medication.

(2) A record of such written consents shall be maintained in the student's cumulative health record.

(3) Upon written request of a parent or person in parental relation, the school district or board of cooperative educational services, as applicable, shall allow the student to maintain an extra inhaled rescue medication in the care and custody of a licensed nurse, nurse practitioner, physician assistant, or physician employed by such district or board of cooperative educational services.

(i) Nothing in this section shall require a school district or board of cooperative educational services to retain a licensed nurse, nurse practitioner, physician assistant, or physician solely for the purpose of taking custody of such extra inhaled rescue medication; or require that such licensed health professionals be available at all times in a school building for the purpose of taking custody of the inhaled rescue medication.

(ii) Such inhaled rescue medication provided by the parent or person in parental relation shall be made available to the student as needed in accordance with school policy and the written permission provided by the duly authorized health care provider.

(4) Each student with asthma or another respiratory disease who is permitted, under this section to self-administer his or her prescribed inhaled rescue medication should have an emergency action plan on file with the school district or board of cooperative educational services.

(c) Students with Allergies. (1) Each board of education or trustees of each school district and each board of cooperative educational services shall allow a student to carry and self-administer their prescribed epinephrine auto injector during the school day, on school property and at any school function, if the student provides the school with:

(i) written consent from the parent or person in parental relation; and

(ii) written permission(also referred to as an order) and an attestation from a duly authorized health care provider confirming:

(a) that the student has a diagnosis of an allergy for which an epinephrine auto injector is needed for the emergency treatment of allergic reactions;

(b) the student has demonstrated that he or she can self-administer the prescribed epinephrine auto injector effectively; and

(c) the expiration date of the order, the name of the prescribed medicine, the dose the student is to self-administer and the circumstances which may warrant the use of the medication.

(2) A record of such written consents shall be maintained in the student's cumulative health record.

(3) Upon written request of a parent or person in parental relation the school district or board of cooperative educational services, as applicable, shall allow the student to maintain an extra epinephrine auto injector in the care and custody of a licensed nurse, nurse practitioner, physician assistant, or physician employed by such district or board of cooperative educational services.

(i) Nothing in this section shall require a school district or board of cooperative educational services to retain a licensed nurse, nurse practitioner, physician assistant, or physician solely for the purpose of taking custody of such extra epinephrine auto injector; or require that such licensed health professionals be available at all times in a school building for the purpose of taking custody of the epinephrine auto injector.

(ii) Such epinephrine auto injector provided by the parent or person in parental relation shall be made available to the student as needed in accordance with school policy and the orders prescribed by the duly authorized health care provider.

(4) Each student with allergies who is permitted under this section to self-administer his or her prescribed epinephrine auto injector should have an emergency action plan on file with the school district or board of cooperative educational services.

(5) Licensed nurses, nurse practitioners, physician assistants, or physicians employed by schools or boards of cooperative educational services are authorized to administer prescribed epinephrine pursuant to the scope of practice of the licensed individual under Title VIII of the Education Law, to students diagnosed with an allergy by

a physician or other duly authorized health care provider and who are permitted under this section to self-administer their prescribed epinephrine auto injector.

(6) Separate from the authority provided by section 136.6 of this Part, for students authorized to self-administer their prescribed epinephrine pursuant to this section, the board of education or trustees of each school district and board of cooperative educational services and nonpublic schools are authorized, but not required, to have licensed registered professional nurses, nurse practitioners, physician assistants, and physicians train unlicensed school personnel to administer prescribed epinephrine auto-injectors in emergency situations, where an appropriately licensed health professional is not available, to the students authorized to self-administer their prescribed epinephrine auto injector pursuant to this section. Training by the licensed health professional shall be provided in a competent manner and in accordance with subdivision (f) of this section.

(d) Students with Diabetes. (1) Each board of education or trustees of each school district and each board of cooperative educational services shall allow a student to carry and self-administer their prescribed insulin through an appropriate medication delivery device, carry glucagon, and carry and use equipment and supplies necessary to check blood glucose and/or ketone levels during the school day, on school property and at any school function, if the student provides the school with:

(i) written consent from the parent or person in parental relation; and

(ii) written permission(also referred to as an order) and an attestation from a duly authorized health care provider confirming:

(a) that the student has a diagnosis of diabetes for which insulin and glucagon through appropriate medication delivery devices, and the use of equipment and supplies to check blood glucose and/or ketone levels are necessary;

(b) the student has demonstrated he or she can self-administer the prescribed insulin effectively, can self-check glucose or ketone levels independently, and can independently follow prescribed treatment orders; and

(c) the expiration date of the order, the name of the prescribed insulin or glucagon, the type of insulin delivery system, the dose or dose range of insulin the student is to self-administer, times when the insulin is to be self-administered by the student, the dose of glucagon that is to be administered, and the circumstances which may warrant the administration of the insulin by the student or the administration of glucagon to the student. The written permission must also identify the prescribed blood glucose and/or ketone test, the times testing is to be done, and any circumstances which warrant checking a blood glucose and/or ketone level.

(2) A written diabetes management plan shall be provided. A record of such written consents shall be maintained in the student's cumulative health record.

(3) Upon written request of a parent or person in parental relation, the school district or board of cooperative educational services shall allow the student to maintain extra insulin, insulin delivery system, glucagon, blood glucose meter and related supplies to treat such student's diabetes provided by the parent or person in parental relation in the care and custody of a licensed nurse, nurse practitioner, physician assistant, or physician employed by such district or board of cooperative educational services, and shall be readily accessible to such pupil.

(i) Nothing in this section shall require a school district or board of cooperative educational services to retain a licensed nurse, nurse practitioner, physician assistant, or physician solely for the purpose of taking custody of extra insulin, insulin delivery system, glucagon, blood glucose meter and related supplies to treat such student's diabetes; or require that such licensed health professionals be available at all times in a school building for the purpose of taking custody of insulin, insulin delivery system, glucagon, blood glucose meter and related supplies to treat such student's diabetes.

(ii) Such insulin, insulin delivery system, glucagon, blood glucose meter and related supplies to treat such student's diabetes provided by the parent or person in parental relation, shall be made available to the student as needed in accordance with school policy and the orders prescribed by the duly authorized health care provider.

(4) Students with diabetes may also carry food, oral glucose, or other similar substances necessary to treat hypoglycemia pursuant to district policy, provided such district policy shall not unreasonably interfere with a student's ability to treat hypoglycemia.

(5) Each student with diabetes who is permitted under this section to self-administer their prescribed insulin, carry glucagon, and carry and use equipment and supplies necessary to check blood glucose and/or ketone levels during the school day should have an emergency action plan on file with the school district or board of cooperative educational services.

(6) Licensed nurses, nurse practitioners, physician assistants, or physicians employed by school districts or boards of cooperative educational services are authorized to calculate prescribed insulin dosages, administer prescribed insulin,

program the prescribed insulin pump, refill the reservoir in the insulin pump, change the infusion site, inject prescribed glucagon, teach an unlicensed person to administer glucagon to an individual, and perform other authorized services pursuant to the scope of practice of the licensed individual under Title VIII of the Education Law, to students diagnosed with diabetes by a physician or other duly authorized health care provider and who are permitted under this section to self-administer their prescribed insulin and carry glucagon, and carry and use equipment and supplies necessary to check blood glucose and/or ketone levels during the school day. Nothing in this section shall authorize unlicensed persons to perform these services except as otherwise permitted by Education Law section 921.

(7) The board of each school district and board of cooperative educational services and nonpublic schools are authorized, but not required to have licensed registered professional nurses, nurse practitioners, physician assistants, and physicians train unlicensed school personnel to administer prescribed glucagon in emergency situations where an appropriately licensed health care professional is not available, to students who are permitted under this section to self-administer their prescribed insulin and carry glucagon, and carry and use equipment and supplies necessary to check blood glucose and/or ketone levels during the school day. Training by the licensed health professional is to be provided in a competent manner and in accordance with subdivision (f) of this section.

(e) In accordance with Title VIII of the Education Law, only licensed health professionals whose scope of practice permits may administer medication to a student in a school setting unless otherwise permitted by Education Law sections 6908, 907,

921 (as added by Chapter 423 of the Laws of 2014) and 921 (as added by Chapter 424 of the Laws of 2014).

(f) Training of Unlicensed Personnel to Administer Certain Medications to specific students.

(1) Prescribed Epinephrine Auto-Injectors. Unlicensed school personnel employed by school districts, boards of cooperative education services, and non-public schools must complete an annual course of training regarding the administration of prescribed epinephrine auto-injectors to a student. Such training must be provided and documented by an authorized licensed health professional as described in subdivision (c) of this section. Components of such training shall include, but not be limited to:

(i) Identification of the specific allergen(s) of the student(s), including review of each student's emergency action plan, if available;

(ii) signs and symptoms of a severe allergic reaction warranting administration of epinephrine;

(iii) how to access emergency services per school policy;

(iv) the steps for administering the prescribed epinephrine auto-injector.

(v) observation of the trainee using an epinephrine auto-injector training device;

(vi) steps for providing ongoing care while waiting for emergency services;

(vii) notification of appropriate school personnel ; and

(viii) methods of safely storing, handling, and disposing of epinephrine auto-injectors.

(2) Training of Unlicensed Personnel to Administer Prescribed Glucagon.

Unlicensed school personnel employed by school districts, boards of cooperative

education services, and non-public schools must complete an annual course of training regarding the administration of prescribed glucagon to a student. Such training must be provided and documented by an authorized licensed health professional as described in section (d) of this section. Components of such training shall include, but not be limited to:

(i) overview of diabetes and hypoglycemia utilizing the Department of Health approved webinar on glucagon administration;

(ii) review of the student's emergency action plan, if available, including treatment of mild or moderate hypoglycemia;

(iii) signs and symptoms of a severe hypoglycemia warranting administration of glucagon;

(iv) how to access emergency services per school policy;

(v) the steps for mixing and administering the prescribed glucagon;

(vi) observation of the trainee using a glucagon training device;

(vii) steps for providing ongoing care while waiting for emergency services;

(viii) notification of appropriate school personnel; and

(ix) methods of safely storing, handling, and disposing of glucagon and used needles and syringes.