



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: 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: January 4, 2016

AUTHORIZATION(S): *Richard A. Santorum* *MaryEllen Elin*

SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents adopt, as an emergency action, 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 Full Board for adoption as an emergency action at the January Regents meeting. A statement of the facts and circumstances which necessitate emergency action is attached.

Procedural History

At the November 2015 Regents meeting, the proposed amendment was discussed by the P-12 Education Committee and adopted as an emergency action by the full Board, effective November 17, 2015. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on December 2, 2015 for a 45-day public comment period.

It is anticipated that the proposed amendment will be presented for permanent adoption at the February 22-23, 2016 Regents Meeting. However, the November emergency rule will expire on February 14, 2016. Another emergency action is necessary at the January 2016 Regents meeting to ensure that the rule remains continuously in effect until it can be presented for adoption and take effect as a permanent rule.

A copy of the proposed amendment is attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

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.

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 February 15, 2016, 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 emergency action adopted at the November 2015 Regents meeting remains continuously in effect until it can be presented for adoption and take effect as a permanent rule.

Timetable for Implementation

The proposed amendment was adopted as an emergency action at the November Regents meeting, effective November 17, 2015, and will expire on February 14, 2016. If adopted at the January 2016 Regents meeting, the second emergency action will become effective on January 15, 2016. It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the February 2016 Regents meeting.

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 February 15, 2015, as follows:

(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. 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.

The proposed amendment was adopted by emergency action at the November 16-17, 2015 Regents meeting, effective November 17, 2015. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on December 2, 2015. Because the Board of Regents meets at scheduled intervals the earliest the proposed amendment could be presented for regular (non-emergency) adoption, after publication in the State Register and expiration of the 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), is the

February 22-23, 2016 Regents meeting. Furthermore, pursuant to SAPA section 203(1), 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 November emergency rule will expire on February 14, 2016, 90 days from its filing with the Department of State on November 17, 2015.

Emergency action to adopt the proposed rule is necessary for the preservation of the general welfare to ensure that the emergency rule adopted at the November 2015 Regents meeting remains continuously in effect until the proposed rule can be presented for adoption and take effect as a permanent rule.

It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at its February 22-23, 2016 meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act.