



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

TO: P-12 Education Committee

FROM: Cosimo Tangorra, Jr. *Cosimo Tangorra Jr.*

SUBJECT: Proposed Addition of Section 136.6 of the Commissioner's Regulations, Relating to School Use of Epinephrine Auto-Injectors

DATE: February 2, 2015

AUTHORIZATION(S): *Richard A. Martone* *Elizabeth P. Berlin*

SUMMARY

Issue for Decision

Should the Board of Regents add a new section 136.6 of the Commissioner's Regulations to prescribe standards for the provision, maintenance and use of epinephrine auto-injectors by school districts, boards of cooperative educational services (BOCES), county vocational education and extension boards, charter schools, and non-public elementary and secondary schools?

Reason(s) for Consideration

Required by statute (Chapter 424 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 rule at the February 2015 Regents meeting. A statement of the facts and circumstances which necessitate emergency action is attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Procedural History

A Notice of Proposed Rule Making was published in the State Register on January 7, 2015. The proposed amendment is attached.

Background Information

Chapter 424 of the Laws of 2014 added a new section 921 to the Education Law, effective February 27, 2015, to permit school districts, BOCES, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools, or any person employed by any such entity, to administer epinephrine auto-injectors in the event of an emergency pursuant to the requirements of Public Health Law section 3000-c. To ensure ready and appropriate access for use during emergencies to any student or staff having anaphylactic symptoms whether or not there is a previous history of severe allergic reaction, the statute provides that such entities may deliver, and maintain on-site, epinephrine auto-injectors in adequate quantities and types deemed by the Commissioner, in consultation with the Commissioner of Health.

The proposed rule prescribes standards for the provision, maintenance and use of epinephrine auto-injectors pursuant to Education Law section 921, to ensure ready and appropriate access for use during emergencies to any student or staff having anaphylactic symptoms pursuant to the requirements of Public Health Law section 3000-c.

Recommendation

Staff recommends that the Regents take the following action:

VOTED: That section 136.6 of the Regulations of the Commissioner is added, as submitted, effective February 27, 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 epinephrine auto-injectors pursuant to Education Law section 921, as added by Chapter 424 of the Laws of 2014, and thus ensure the timely implementation of the statute on its effective date.

Timetable for Implementation

If adopted at the February Regents meeting, the emergency rule will become effective for a 90-day period beginning on February 27, 2015, the effective date of Chapter 424 of the Laws of 2014. It is anticipated that the proposed rule will be presented for permanent adoption at the March 2015 Regents meeting.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 207, 305 and 921 and Chapter 424 of the Laws of 2014

Section 136.6 of the Regulations of the Commissioner of Education is added, effective February 27, 2015, as follows:

§136.6 Authorized Use of Epinephrine Auto-Injector

(a) Definitions. As used in this section:

(1) 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.

(2) Trained school personnel means any person employed by a school district, board of cooperative educational services, county vocational education and extension board, charter school or non-public elementary and secondary school, including but not limited to, health professionals who have successfully completed a training course in the use of epinephrine auto-injector devices approved by the Department of Health pursuant to Public Health Law section 3000-c.

(3) Collaborative agreement means a written agreement with an emergency health care provider pursuant to Public Health Law section 3000-c that incorporates written practice protocols, and policies and procedures that shall ensure compliance with the provisions of Public Health Law section 3000-c.

(4) Emergency health care provider means: (i) a physician with knowledge and experience in the delivery of emergency care; or (ii) a hospital licensed under Article 28 of the Public Health Law that provides emergency care.

(5) Regional Council means a regional emergency medical services council established pursuant to Public Health Law section 3003.

(6) Instructional school facility means a building or other facility maintained by a school district, board of cooperative educational services, 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) Each school district, board of cooperative educational services, county vocational education and extension board, charter school, and non-public elementary and secondary school may provide and maintain on-site in each instructional school facility epinephrine auto-injectors for use during emergencies in accordance with Public Health Law section 3000-c. Each such facility shall have sufficient epinephrine auto-injectors available to ensure ready and appropriate access for use during emergencies to any student or staff having symptoms of anaphylaxis whether or not there is a previous history of severe allergic reaction. In determining the quantity and placement of epinephrine auto-injectors in collaboration with the emergency health care provider, 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.

(c) The school district, board of cooperative educational services, county vocational education and extension board, charter school, or non-public elementary and secondary school shall file a copy of the collaborative agreement with the appropriate Regional Council. Trained school personnel shall not administer an epinephrine auto-injector in accordance with Public Health Law 3000-c prior to the filing of the collaborative agreement with the Regional Council.

(d) In the event of an emergency, trained school personnel may administer an epinephrine auto-injector to any student or school personnel having symptoms of anaphylaxis in an instructional school facility, whether or not there is a previous history of severe allergic reaction pursuant to Public Health Law section 3000-c.

(e) Every use of an epinephrine auto-injector device pursuant to this section and Public Health Law section 3000-c shall immediately be reported to the emergency health care provider.

8 NYCRR §136.6

STATEMENT OF FACTS AND CIRCUMSTANCES

WHICH NECESSITATE EMERGENCY ACTION

The proposed rule is necessary to implement Chapter 424 of the Laws of 2014, which adds a new section 921 of the Education Law, effective February 27, 2015, to allow school districts, boards of cooperative educational services (BOCES), county vocational education and extension boards, charter schools, and non-public elementary and secondary schools in the State to provide and maintain on-site in each instructional school facility epinephrine auto-injectors in quantities and types deemed by the Commissioner, in consultation with the Commissioner of Health, to be adequate to ensure ready and appropriate access for use during emergencies to any student or staff having anaphylactic symptoms whether or not there is a previous history of severe allergic reaction. Section 921 also provides that school districts, BOCES, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools in this state or any person employed by any such entity may administer epinephrine auto-injectors in the event of an emergency pursuant to the requirements of section three-thousand-c of the Public Health Law.

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 March 16-17, 2015 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the March meeting, would be April 1, 2015, the

date a Notice of Adoption would be published in the State Register. However, the provisions of Chapter 424 become effective on February 27, 2015 and section 3 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 February 2015 Regents meeting for the preservation of the general welfare in order to immediately establish standards for the provision, maintenance and administration of epinephrine auto-injectors pursuant to Education Law section 921, as added by Chapter 424 of the Laws of 2014, 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 March 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.