



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 136.8 of the Commissioner's Regulations, Relating to School Use of an Opioid Antagonist

DATE: September 8, 2015

AUTHORIZATION(S):

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SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents adopt as a permanent rule 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 Full Board for action at the September 2015 Regents meeting.

Procedural History

The proposed rule was discussed by the P-12 Education Committee and adopted as an emergency action at the July 2015 Regents meeting, effective August 11, 2015. A Notice of Proposed Rule Making was published in the State Register on July 8, 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

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.

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.

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 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 October 7, 2015.

Timetable for Implementation

The proposed rule was adopted as an emergency action at the July 2015 Regents meeting, effective August 11, 2015. If adopted at the September 2015 Regents meeting, the proposed rule will take effect as a permanent rule on October 7, 2015.

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 October 7, 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.

8 NYCRR §136.8

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the State Register on July 8, 2015, the State Education Department received the following comments:

1. COMMENT:

Would a volunteer, trained teacher taking students overseas in a non-school sponsored trip, be allowed to carry Naloxone on that trip?

DEPARTMENT RESPONSE:

Pursuant to the provisions of Education Law section 922, as added by Part V of Chapter 57 of the Laws of 2015, the purpose of this rule is for school districts who choose to participate as an opioid antagonist recipient pursuant to the provisions of Public Health Law section 3309, to permit any person employed by such entity who has been trained by a program approved under that section to 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. An instructional school facility is defined as any building or other facility maintained by a school district, board of cooperative educational services (BOCES), county vocational education and extension board, charter school, or non-public elementary or secondary school where instruction is provided to students pursuant to its curriculum. Accordingly, in the event of an emergency, unlicensed trained school personnel may provide an opioid antagonist to students or staff at any school sponsored activity occurring on-site in an instructional school facility. Therefore, the provisions of this rule governing a school district's participation as an opioid

antagonist recipient would not be applicable to the scenario presented in the above comment.

2. COMMENT:

Is it the intention of the program to allow volunteer, unlicensed personnel to administer naloxone only during the school day? I would think that once they are trained, they could provide that care during a school activity, when it may be more likely to happen, especially at a dance or football game (often evening events) that are often held on school grounds or in the school building where the naloxone is readily available along with an AED. I know that the police carry intranasal (IN) naloxone on their person. Is it the intention of this program to allow the volunteer, unlicensed school employee to carry that medication as well?

DEPARTMENT RESPONSE:

Education Law section 922 provides that school districts, boards of cooperative educational services (BOCES), county vocational education and extension boards, charter schools, and non-public elementary and secondary schools may 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. An instructional school facility is defined as any building or other facility

maintained by a school district, board of cooperative educational services (BOCES), county vocational education and extension board, charter school, or non-public elementary or secondary school where instruction is provided to students pursuant to its curriculum. Accordingly, in the event of an emergency unlicensed trained school personnel may provide an opioid antagonist to students or staff at any school sponsored activity occurring on-site in an instructional school facility.

3. COMMENT:

Is this already provided through hospitals?

DEPARTMENT RESPONSE:

Pursuant to the provisions of Education Law section 922, the proposed rule sets forth standards for the elective participation by school districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools in an opioid overdose prevention program pursuant to the provisions of Public Health Law section 3309.

The proposed rule is not related to the general manner and methods of obtaining Naloxone in a hospital setting. Naloxone is routinely stocked in hospital pharmacies for the treatment of patients, primarily in their emergency departments. There are hospitals that are registered opioid overdose programs. Some of those hospital-based programs happen to be based in—or focused on—emergency departments for purposes of providing naloxone to patients at risk of (another) overdose. Some other hospital-based programs are focused on behavioral health patients. A hospital is not routinely a place where individuals can obtain naloxone.

4. COMMENT:

This law says the school is allowed—does this mean we are not required?

DEPARTMENT RESPONSE:

Correct. The proposed rule sets forth the standards for the elective participation by school districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools in an opioid overdose prevention program pursuant to the provisions of Public Health Law section 3309. Schools are allowed, but not required, to implement an opioid overdose program.

5. COMMENT:

If a school district chooses to participate, can an RN administer Naloxone without a patient-specific order? Is there liability should the district decide against stocking Narcan?

DEPARTMENT RESPONSE:

Part V of Chapter 57 of the Laws of 2015 permits, but does not require, school districts to participate in an opioid overdose prevention program pursuant to the provisions of Public Health Law section 3309. If a school district chooses to participate, the school district's medical director, who is required to be a licensed physician or a certified nurse practitioner, may write a non-patient specific order, under which the registered professional nurse can administer naloxone. Part V of Chapter 57 also includes amendments to Education Law §§6527 and 6909 to authorize registered professional nurses (RNs) to administer opioid-related overdose treatment pursuant to a non-patient specific order and protocol prescribed by a licensed physician or a certified nurse practitioner (i.e., school district medical director).

6. COMMENT:

Is there an opioid school policy template?

DEPARTMENT RESPONSE:

Currently, there is not an opioid overdose prevention school policy template, however comprehensive guidance on the Opioid Overdose Prevention Program is available from the New York Statewide School Health Services Center site –

<http://www.schoolhealthservicesny.com/azindex.cfm?subpage=367>