

**GOVERNOR'S ADVISORY COUNCIL FOR EXCEPTIONAL CITIZENS**

GEORGE V. MASSEY STATION
516 WEST LOOCKERMAN STREET
DOVER, DELAWARE 19904
TELEPHONE: (302) 739-4553
FAX: (302) 739-6126

December 18, 2014

Tina Shockley, Education Associate
Policy Advisor
Department of Education
Townsend Building
401 Federal Street, Suite 2
Dover, DE 19901

RE: 18 DE Reg. 419/14 DE Admin. Code 817 Department of Education Proposed Medications and Treatments Regulation [(December 1, 2014)]

Dear Ms. Shockley:

The Governor's Advisory Council for Exceptional Citizens (GACEC) reviewed the Department of Education proposal to issue regulations implementing the requirements of Senate Bill No. 246, which was enacted in July, 2014. A copy of the engrossed bill is attached for facilitated reference. The legislation indicates that the federal School Access to Emergency Epinephrine Act was passed in 2013. The federal Act establishes a preference in receiving certain federal grants to states which adopt laws addressing administration of epinephrine to students experiencing anaphylactic reactions. Council would like to share the following observations on the proposed regulations.

First, Council would like to note some inaccuracies with the numbering of the sections of regulation as listed in the Register of Regulations. Section 2.0 Definitions is followed by Section 13.0 Medications and other typographical errors in numbering until Section 7.0

Second, §3002E(a) of the statute requires the DOE regulation to address documentation of the training of "Trained Persons". The implication is that the legislators envisioned record keeping of written confirmation of completion of training. In contrast, the regulation (§6.1.2) merely contemplates the written representation of personnel that he/she has completed training.

Reasonable persons might differ on whether a self-reporting approach is practical, especially given the risk of death if epinephrine is not properly administered. It should not be burdensome to require personnel to submit proof of completion of a Board of Nursing training course.

Third, a related concern is the “weakening” of the record-keeping system for trained personnel. The regulation deletes a current requirement that a school nurse essentially act as a point person to send the Department of Education a list of educators who have completed the training:

A School Nurse shall:

6.1.2.1. Complete instructor training as designated by the Department of Education ~~and shall submit a list of educators and other school employees, who have completed the training to the Department of Education.~~

It would be much easier for the Department to monitor implementation of the regulation if schools supplied a list of trained personnel. Otherwise, the Department would be completely unaware if multiple schools had zero trained personnel. Some DOE monitoring of implementation is contemplated since the school nurse is required (§7.5) to submit an emergency medication summary sheet to the DOE within 48 hours of use of an emergency medication. Moreover, the statute [§3005E(a)] requires schools to “identify and train a sufficient number of eligible persons”. If no information on the number of trained personnel is submitted to DOE, Council questions how it will monitor compliance with this statutory standard.

Fourth, the statute [§3005E(b)] contains the following provision:

Except for a school nurse, an educator, coach or person hired or contracted by schools serving students in pre-kindergarten through grade 12 shall not be compelled to become a Trained Person, unless this is a requirement of hire or contract.

In contrast, the regulation contains inconsistent standards implementing this provision:

- 7.2.1 An identified person cannot be compelled to become a Trained Person, unless training is a requirement of their position, hire, or contract.
- 8.0. Except for a School Nurse, no Educator or Other School Employee shall be compelled to assist a student with medication or administer emergency medication.

The latter section omits the caveat that personnel can be compelled to fulfill the qualifications and role of a Trained Person if “a requirement of hire or contract”.

Fifth, in §2.0, the definition of “Assistance with Self-Administration of Medication” is problematic. It includes the following provision:

The one exception is with emergency medications where standard emergency procedures prevail ~~in lifesaving circumstances~~ for life threatening symptoms of a diagnosed condition

and includes the administration of the medication based on the healthcare provider's order and parent permission.

The definition of "Emergency Medication for a Diagnosed Medical Condition" is similarly limited to "a diagnosed medical condition".

Consistent with the preamble to Senate Bill No.246, approximately 25% of all anaphylaxis cases occur in children whose food allergy was previously undiagnosed. See also regulatory §7.1.2. Therefore, the reference to "a diagnosed condition" is extremely limiting. Likewise, since the condition may be undiagnosed, there may be no order from a provider and no parent permission.

The DOE could delete the entire sentence since it is unnecessary. There is no need to include the emergency standards within the definition of Assistance with Self-Administration of Medication. The balance of the regulation provides ample guidance on emergency situations.

Sixth, in §2.0, the definition of "medication" includes a categorical requirement that it "has been authorized for a student to use". There is some "tension" between that definition and the authorization to administer an emergency "medication" for an allergic reaction based on an undiagnosed condition. There will be no prior authorization from a health care provider or parent since the condition is undiagnosed.

Seventh, in §2.0, the definition of "paraeducator" is also limiting. It recites that the term means "teaching assistants or aides in a school". This could exclude a "service paraeducator" [14 DE Admin Code 1517] who might provide assistance to a student in extracurricular or off-site activities. If a paraeducator were to become a "Trained Assistant for Self-Administration" or a "Trained Person", the paraeducator could be working outside a building "at an Approved School Activity" [§6.1.4] such as a field trip, team competition, or playground recess. See October 17, 2013 Delaware News Journal article noting allergic reactions due to wasp sting or eating peanut on playground.

Eighth, Council would like clarification on how schools are to obtain prescription and non-prescription medications. §6.1.1.3 states as follows: "Non-prescription medications shall be provided to the School Nurse by the parent..."; however, §§3.2.1 and 6.1.1.2 in referencing prescription medications do not reference receiving the medication from the parent, leaving one to assume that this is the case.

Ninth, §6.1 only permits Trained Assistants for Self-Administration to act during approved school activities "in kindergarten through Grade 12". This omits preschool activities which are expected to be covered. See 14 Del.C. §3001E(3) and regulatory §2.0, definition of "school". Compare reference to "pre-kindergarten through Grade 12" in §6.1.4.

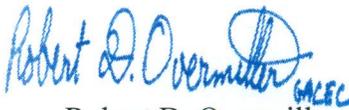
Tenth, §7.1 should also be amended as it is unduly limiting. It literally only allows administration of an emergency medication "in the school building".

Eleventh, the original version of Senate Bill No. 246 addressed emergency responses to asthma attacks. The explicit references to asthma were deleted by Senate Amendment No. 1. Apart from food allergies, emergency administration of Diastat for seizures and glucagon for symptoms of diabetes are authorized in some states. See attached Epilepsy Legal Defense Fund, "Diastat Administration in Schools: Summary of Relevant Federal Laws and Selected Cases" at p. 1. Senate Bill No. 246 defines "emergency medication" as one responsive to an "allergic reaction". This limitation is mirrored in the regulation, §2.0. Schools are directed to maintain "current, stock Emergency Medication" [§7.3]. It would be "progressive" if the DOE expanded the scope of emergency medications beyond those for allergic reactions. If legislation were needed to facilitate a broader approach, that could be considered.

Twelfth, §7.3.1 is missing the word 'for' prior to "...the Trained Person" at the end of the sentence. Also, in this section, Council would like clarity on the number of secure and accessible storage locations mentioned. It appears to be saying that emergency medications will be kept in multiple locations in the building to facilitate ease of accessibility; however, prescription medications are typically in one container. Council queries how prescription medications may be stored in multiple locations?

Thank you for your consideration of our observations and recommendations. Please contact me or Wendy Strauss at the GACEC office if you have any questions.

Sincerely,

Handwritten signature of Robert D. Overmiller in blue ink, with "GACEC" written in small letters below the signature.

Robert D. Overmiller
Chairperson

RDO:kpc

CC: The Honorable Mark Murphy, Secretary of Education
The Honorable Bethany Hall-Long, Delaware State Senate
The Honorable Michael Barbieri, Delaware House of Representatives
Dr. Karyl Thomas Rattay, Division of Public Health
Dr. Teri Quinn Gray, State Board of Education
Mr. Chris Kenton, Professional Standards Board
Ms. Mary Ann Mieczkowski, Department of Education
Ms. Paula Fontello, Esq.
Ms. Terry Hickey, Esq.
Ms. Ilona Kirshon, Esq.

Attachments