

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 817

FINAL

REGULATORY IMPLEMENTING ORDER

817 Medications and Treatments

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education intends to amend 14 **DE Admin. Code** 817 Medications and Treatments. This regulation is amended to be in compliance with Senate Bill 246 as amended by Senate Amendment #1 of the 147th General Assembly. It clarifies what constitutes an emergency medication, who can administer that medication and whether it can be administered to a diagnosed or undiagnosed individual, and in what school setting.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on December 5, 2014, in the form hereto attached as Exhibit "A". Comments were received from several members of the public, the Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) as follows:

The first comment was relative to self-administration versus administration of a life-saving medication by a lay person for life-threatening symptoms. In response to this comment, the Department added language to clarify the definition of Trained Assistant for Self-Administration, who is able to administer in the event of a life-threatening symptom;

The GACEC and SCPD provided other comments relative to the removal of the explicit requirement that the School Nurse submit a list of educators or the other school employees that have completed the training to the Department and a suggestion that this weakened the record keeping system for trained personnel. The Department modified 6.1.2 of the regulation requiring "documented acknowledgement" of training to align with current technology. This documentation is currently maintained in an electronic format at the Department;

Another comment was related to a possible inconsistency of standards relative to who is compelled to become a Trained Person. The Department amended 8.0 to eliminate the inconsistency by adding "unless training is a requirement of hire or contract";

Also commented was the potentially limiting definition of "diagnosed medical condition". In response the Department notes that Section 6.0 of the regulation addresses self-administration of medications for diagnosed conditions and administration of medications in an emergency. In addition, SB 246 allows for administration of life-saving medications by a Trained Person only for an allergic reaction to diagnosed or undiagnosed individuals;

Additional comments questioned the definition of Medication as it relates to authorization for a student to use it for an allergic reaction based on an undiagnosed condition. The Department notes that no prior authorization is needed from a healthcare provider for emergency medication to treat a life-saving allergic reaction. Division of Public Health will be providing orders and guidance on the administration of such medications.

Also suggested was that the definition of "paraeducator" and "service paraeducator" was limiting because of the language "in the school", and likewise in 7.1 using the words "in the school building" as limiting in the administration of emergency medication. The Department does not agree that the definition of paraeducator or service paraeducator is limiting, as it is covered under Other School Employees. However, the Department has amended the regulation to clarify the language in 7.1 to "in the school setting";

Another comment seeks to expand the scope of emergency medications beyond those for allergic reactions. The Department notes that assisting students with self-administration is only allowed in K-12 based on 24 **Del.C.** §1921(a)(17), whereas SB 246, 14 **Del.C.** §3001E(3) requires emergency response to pre K-12. The Department notes that the regulation changes are implementing SB 246 and expanding assistance to include administration of medication in response to a life-threatening symptom in a person with a diagnosed condition. Legislation would be necessary to expand the definition of Emergency Medication;

Another comment questions how prescription medications may be stored in multiple locations. DOE notes that based upon guidance from the Division of Public Health, stock (not individual prescription medications) epinephrine will be maintained in a location(s) accessible to the Trained Persons;

Clarifying language was added to 6.1.1.2 to make it consistent with 6.1.1.3.

Lastly, there was a grammatical change made in 7.3.1.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 817 Medications and Treatments in order to be in compliance with Senate Bill 246 as amended by Senate Amendment #1 of the 147th General Assembly.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 817 Medications and Treatments. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 817 Medications and Treatments attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 817 Medications and Treatments hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 817 Medications and Treatments amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 817 Medications and Treatments in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on January 15, 2015. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 15th day of January 2015.

DEPARTMENT OF EDUCATION

Mark T. Murphy, Secretary of Education

Approved this 15th day of January 2015

817 Medications and Treatments

1.0 Purpose

The purpose of this regulation is to provide guidance regarding the medications and treatments to be provided to students pursuant to current Delaware Code.

2.0 Definitions

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly states otherwise:

"Approved School Activity" means a school-sponsored field trip or approved school activity outside of the traditional school day or off-campus.

"Assist(ance) with Self-Administration of Medication" means assisting a student in kindergarten through grade 12 in the self-administration of a medication taken orally, by inhalation, or applied topically, provided that the medication is in a properly labeled container. Assistance may include holding the medication container for the student, assisting with the opening of the container, and assisting the student in self-administering the medication. Assistance does not include making nursing judgments. Lay assistants shall not assist with injections. 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.

"Controlled Medication" means those prescribed drugs regulated by Federal (CSA of 1970) and/or State Controlled (dangerous) Substances Act.

"Current" means a medication or prescription that is not outdated or expired according to the date on the label. A current prescription is written for a specific time period, not to exceed one year.

"Dosage" or **"Dose"** means a specific amount of medication prescribed or directed to be taken at any one time.

"Educators" means teachers, administrators, and paraeducators employed by a school ~~servicing students in~~ Pre-Kindergarten through Grade 12.

"Emergency Medication" means a medication necessary for response to a life-threatening allergic reaction.

“Emergency Medication for a Diagnosed Medical Condition” means a medication prescribed to treat a life-threatening symptom of a diagnosed medical condition.

“Emergency Medication Summary Sheet” means a document developed by the Department of Education and the Division of Public Health to report the use of Emergency Medication in the school setting.

“Field Trip” means any off campus, school sponsored activity.

“Licensed Health Care Healthcare Provider” means anyone lawfully authorized to prescribe medications and treatments.

“Medication” means a legal drug, which has been authorized for a student to use and includes both prescription and non-prescription drugs.

“Non-prescription Medication” means any over-the-counter medication that can be sold legally without a prescription.

“Other School Employees” means coaches or persons hired or contracted by schools ~~servicing students in Kindergarten through Grade 12.~~

“Paraeducators” mean teaching assistants or aides in a school.

“Prescription Medication” means a legal drug that has a written order for an individual student by a licensed health care provider licensed to prescribe medication.

“School” means an educational facility serving students in kindergarten through grade 12 and any associated pre-kindergarten program in such facility.

“School Nurse” means a Registered Nurse licensed to practice in the State of Delaware, who is employed by a school district, charter school, or private school.

“Traditional School Day” means the hours within the days counted to meet the state minimum number of school days each year and summer school.

“Trained Assistant for Self-Administration” means an Educator or Other School Employee who has completed the training to assist a student with self-administration of medications. This person may render emergency care ~~[to any student]~~, including injection, ~~[to any student unable to self-administer medication]~~ for life-threatening symptoms of a diagnosed condition based on the healthcare provider’s order and parent permission.

“Trained Person” means an Educator or Other School Employee who has completed the training to administer Emergency Medicine to diagnosed and undiagnosed students with symptoms of a life-threatening allergic reaction in the school setting.

43.0 Medications

- 43.1 Medications may be administered to a public school student by the School Nurse when a written request to administer the medication or treatment is on file from the parent, guardian or Relative Caregiver or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a).
 - 43.1.1 The School Nurse shall check the student health records and history for contraindications and all allergies, especially to the medications, and shall provide immediate medical attention if an allergic reaction is observed or make a referral if symptoms or conditions persist.
 - 43.1.2 The School Nurse shall also document the student's name, the name of medication and treatment administered, the date and time it was administered and the dosage if medication was administered.
- 43.2 In addition to the requirements set forth in ~~2.1 below~~ 3.1 above, in the case of a Prescription Medications, the requirements set forth below in ~~2.2.1 through 2.2.4~~ 3.2.1 through 3.2.4 shall also apply.
 - 43.2.1 Prescription medications shall be provided to the School in the original container and properly labeled with the student's name; the prescribing licensed health care provider's name; the name of the medication; the dosage; how and when it is to be administered; the name and phone number of the pharmacy and the current date of the prescription. The medication shall be in a container which meets United States Pharmacopoeia National Formulary standards.
 - 43.2.2 Medications and dosages administered by the School Nurse shall be limited to those recommended by the Federal Drug Administration (FDA), peer review journal that indicates doses or guidelines that are both safe and effective, or guidelines that are specified in regional or national guidelines.
 - 43.2.3 The prescription and the medication shall be current and long term prescriptions shall be ~~re-authorized~~ reauthorized at least once a year.
 - 43.2.4 All medications classified as controlled substances shall be counted and reconciled each month by the School Nurse and kept under double lock. Such medications should be transported to and from School by an adult.

- 43.3 Non-prescription Medication must be in an original container with full label and may be given by the School Nurse after the School Nurse assesses the complaint and the symptoms to determine if other interventions can be used before medication is administered.

34.0 Treatments

Treatments, including specialized health procedures, shall be prescribed by a licensed health care provider with directions relative to administration or supervision.

45.0 IEP Team

For a student who requires significant medical or nursing interventions, the Individual Education Program (IEP) team shall include the School Nurse.

56.0 Assistance With Self-Administration of Medications at Approved School Activities

- 56.1 Educators and Other School Employees who are Trained Assistants for Self-Administration are authorized by 24 Del.C. §1921(a)(17) to assist a student with self-administration of ~~medications on a field trip or approved school activity outside of the traditional school day or off-campus~~ at an Approved School Activity for students in kindergarten through Grade 12. The Trained Assistant for Self-Administration is subject to the following provisions:

- 56.1.1 Assistance with Self-Administration of medication shall not be provided without the prior written request or consent of a parent, guardian or Relative Caregiver, or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a). Said written request or consent shall contain clear instructions including: the student's name; the name of the medication; the dose; the time(s) and date(s) of administration; and the method of administration. At least one copy of said written request or consent shall be in the possession of the person assisting a student with medication on a ~~field trip or approved School activity~~ outside of the traditional School day or off-campus.

- 56.1.1.1 Medications shall be prescribed by a licensed health care provider and are ones that cannot be rescheduled for times when a person, who may legally administer medication, is available.

- 56.1.1.1.1 Doses may be provided for up to one week, unless covering a [Field Trip Approved School Activity] lasting longer than this time period, and shall be maintained in a secure location.

- 56.1.1.2 Prescription medications shall be provided to the School Nurse **[by the parent]** and shall be properly labeled with the student's name; the licensed health care provider's name; the name of the medication; the dosage; how and when it is to be administered; the name and phone number of the pharmacy; and the current date of the prescription. The medication shall be in a container which meets United States Pharmacopoeia National Formulary standards.

- 56.1.1.2.1 Controlled medications must be stored on the person assisting or in a secure location under double lock. Maintaining doses for greater than one day is not permitted except in the case of an overnight activity.

- 56.1.1.3 Non-prescription medications shall be provided to the School Nurse by the parent in an original container along with a current, written directive from the student's licensed health care provider and shall include the student's name; the licensed health care provider's name; the name of the medication; the dosage; and how and when it is to be administered.

- 56.1.2 In order to be qualified to ~~assist with~~ provide Assistance with Self-Administration of medication, each such person shall complete a Board of Nursing approved training course developed by the Delaware Department of Education, pursuant to 24 Del.C. §1921(a)(17). Training shall be renewed minimally every five years. No person shall ~~assist a student with~~ provide Assistance with Self-Administration of medication without **[written documented]** acknowledgment **[to the Department of Education]** that he/she has completed the course and that he/she understands the same, and will abide by the safe practices and procedures set forth therein. A School Nurse ~~employed by the public or private district or charter in which the student is enrolled~~ shall:

- 56.1.2.1 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.~~

- 56.1.2.2 Provide Oversee the training for ~~e~~Educators and Other School Employees.

- 56.1.2.3 Coordinate the collection and review of the written parental consent.

- 56.1.2.4 Provide the appropriately labeled medication, copy of the consent, and directions on assistance to the ~~trained educator or other school employee~~ Trained Assistant for Self-Administration.

- 56.1.3 Each School district shall maintain a record of all students receiving ~~a~~Assistance with Self-Administration of ~~m~~Medications pursuant to this regulation. Said record shall contain the student's name; the name of the medication; the dose; the time of administration; the method of administration; and the name of the person assisting.
- 56.1.4 ~~Except for a school nurse, no educator or other school employee shall be compelled to assist a student with medication. If a facility is otherwise required to have a school nurse, nothing contained here shall be interpreted to relieve the school of such obligation. The School Nurse may prepare a Trained Assistant for Self-Administration to render emergency care to a student, with a known, diagnosed condition, who is in pre-kindergarten through Grade 12 and shows life-threatening signs and symptoms of the condition at an Approved School Activity.~~
- 6.1.4.1 Response shall include immediate activation of emergency medical services.
- 6.1.4.2 Preparation shall include instruction in the provision of the student's Emergency Medication for a Diagnosed Medical Condition, including injection, for symptoms related to the condition. Instruction will be based on the healthcare provider's order and the manufacturer's instructions for administration.
- 6.1.4.3 The Trained Assistant for Self-Administration shall annually demonstrate his/her ability to provide Emergency Medication for a Diagnosed Medical Condition.
- 6.1.4.4 An Emergency Medication for a Diagnosed Medical Condition shall be a current prescription provided by the student's licensed healthcare provider for a diagnosed medical condition that requires immediate medication to save or sustain life and is one which can be safely provided by a Trained Assistant for Self-Administration.
- 6.1.4.5 In addition to 6.1.3, the Trained Assistant for Self-Administration shall provide documentation related to the rendering of emergency care, to include at a minimum, the student's symptoms, time of the incident, medication administered, other actions taken, and the response by emergency medical services.

7.0 Emergency Medication Administration for Life-threatening Allergic Reaction in School

- 7.1 School Nurses and Trained Persons are authorized by 16 Del.C. Ch. 30E to administer Emergency Medication Without an Order at School to a student in pre-K through grade 12, who is symptomatic of a life-threatening allergic reaction in the school **[building setting]**.
- 7.1.1 Public School Nurses shall follow the Division of Public Health's medical emergency standing orders for allergic reactions and anaphylaxis in previously undiagnosed individuals.
- 7.1.2 Trained Persons shall follow the guidance issued by the Division of Public Health, on the administration of Emergency Medications without an order in the school setting to undiagnosed individuals.
- 7.2 The School, in consultation from the School Nurse, shall annually identify and train a sufficient number of Educators and Other School Employees to become Trained Persons.
- 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.
- 7.2.2 The training shall be a program approved by the Department of Education and the Division of Public Health.
- [7.2.3 The Trained Person shall annually re-train or demonstrate competency as a Trained Person.**
- 7.2.4 The School shall maintain documentation of annual training and Trained Persons and make available upon request to the Department of Education or Division of Public Health.]**
- 7.3 The School shall maintain current, stock Emergency Medication.
- 7.3.1 Emergency Medication shall be stored in a minimum of two secure and accessible locations in the school setting as identified by the School Nurse: one for the School Nurse and the other **[or for]** the Trained Person.
- 7.4 The School shall maintain documentation of the use of Emergency Medication.
- 7.4.1 The Trained Person shall complete the Emergency Medication Administration by Trained Person Sheet on the day of the any administration and shall submit to the School Nurse.
- 7.5 The School Nurse shall submit the Emergency Medication Summary Sheet to the Department of Education and the Division of Public Health within 48 hours of the use of an Emergency Medication.

8.0 Other School Employees Obligation

Except for a School Nurse, no Educator or Other School Employee shall be compelled to assist a student with medication or to administer emergency medication **[unless training is a requirement of hire or contract]**. If a facility is

otherwise required to have a School Nurse, nothing contained here shall be interpreted to relieve the school of such obligation.

Nonregulatory note: 14 **DE Admin. Code** 612, *Possession, Use and Distribution of Drugs and Alcohol* addresses student self-administration of a prescribed asthmatic quick relief inhaler and student self-administration of prescribed autoinjectable epinephrine.

Nonregulatory note: 16 **Del.C.** §3007E provides liability protection for any Trained Person or School Nurse, who, in good faith and without expectation of compensation from the person aided or treated, administers Emergency Medication.

7 DE Reg. 68 (07/01/03)

10 DE Reg. 1802 (06/01/07)

16 DE Reg. 957 (03/01/13)

18 DE Reg. 639 (02/01/15) (Final)