

# DEPARTMENT OF EDUCATION

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 101, 121(a), 122(b)(1) and (b)(2)  
(14 Del.C. §§101, 121(a), 122(b)(1) and (b)(2))  
14 DE Admin. Code 817

### PROPOSED

### PUBLIC NOTICE

#### Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)

#### 817 Medications and Treatments

#### A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

#### B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 Del.C. §101, §121(a) and §122(b)(1) and (b)(2), the Secretary of Education seeks to amend **14 DE Admin. Code 817 Medications and Treatments**. This regulation is being amended to add a definition of "Hand Sanitizer" in order to clarify its use in response to the COVID-19 pandemic and beyond, as well as to edit the regulation to comply with the *Delaware Administrative Code Drafting and Style Manual*.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before September 3, 2020 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to [DOERegulations.comment@doe.k12.de.us](mailto:DOERegulations.comment@doe.k12.de.us). A copy of this regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml) or obtained at the Department of Education's Office of the Secretary, located at the address above.

#### C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not specifically address the improvement of student achievement as measured against state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation does not directly address students receiving an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendment regulation will help ensure all students' health and safety are adequately protected.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help ensure that all students' legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements or mandates on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The amended regulation does not change the decision making authority and accountability for addressing the subject to be regulated.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation is consistent with and not an impediment to the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the amended regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no material costs to implementing this amended regulation.

#### 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.

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

## 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~~ off campus.

**"~~Assist(ance)~~ Assistance 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 for life-threatening symptoms of a diagnosed ~~condition,~~ condition and includes the administration of the medication based on the healthcare provider's order and parent permission.

**"Controlled Medication medication"** means those prescribed drugs regulated by Federal (Controlled Substance Act of 1970) ~~and/or~~ 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 (1) year.

**"Dosage" or "Dose"** means a specific amount of medication prescribed or directed to be taken at any one (1) time.

**"Educators"** means teachers, administrators, and paraeducators employed by a school.

**"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.

**"Hand Sanitizer"** means a commercially available healthcare topical antiseptic product with at least 60% ethanol or 70% isopropyl alcohol content.

**"Licensed 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. This definition excludes Hand Sanitizer.

**"Non-prescription Medication medication"** means any over-the-counter medication that can be sold legally without a prescription. This definition excludes Hand Sanitizer.

**"Other School Employees"** means coaches or persons hired or contracted by schools.

**"Paraeducators"** mean teaching assistants or aides in a school.

**"Prescription Medication medication"** means a legal drug that has a written order for an individual student by a licensed ~~health care~~ healthcare 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.

**"Self-Use of Hand Sanitizer"** means a student using Hand Sanitizer in a legally permissible manner.

**"Traditional School Day 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, 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~~ medication to diagnosed and undiagnosed students with symptoms of a life-threatening allergic reaction in the school setting.

18 DE Reg. 639 (02/01/15)  
19 DE Reg. 622 (01/01/16)

### 3.0 Medications

- 3.1 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~~ relative caregiver or the student if 18 years or older, or an unaccompanied homeless youth (as defined by ~~42 USC 11434a~~) 42 U.S.C. §11434a).
- 3.1.1 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.
- 3.1.2 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.
- 3.2 In addition to the requirements set forth in subsection 3.1 above, in the case of a Prescription ~~Medications~~ medications, the requirements set forth below in subsections 3.2.1 through 3.2.4 shall also apply.
- 3.2.1 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~~ healthcare 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.
- 3.2.2 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.
- 3.2.3 The prescription and the medication shall be current and ~~long-term~~ long-term prescriptions shall be reauthorized at least once a year.
- 3.2.4 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.
- 3.3 Non-prescription ~~Medication~~ 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.

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

### 4.0 Treatments

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

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

### 5.0 IEP Team

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

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

### 6.0 Assistance With Self-Administration of Medications at Approved School Activities

- 6.1 Educators and Other School Employees who are Trained Assistants for Self-Administration are authorized by 24 **Del.C.** §1921(a)(13) to assist a student with self-administration of Medications at an Approved School Activity for students in kindergarten through Grade 12. The Trained Assistant for Self-Administration is subject to the following provisions:
- 6.1.1 Assistance with Self-Administration of Medication shall not be provided without the prior written request or consent of a parent, guardian or ~~Relative Caregiver~~ relative caregiver, or the student if 18 years or older, or an unaccompanied homeless youth (as defined by ~~42 USC 11434a~~) 42 U.S.C. §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)~~ times and dates 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~~ school day or ~~off-campus~~ off campus.

- 6.1.1.1 Medications shall be prescribed by a licensed ~~health care~~ healthcare provider and are ones that cannot be rescheduled for times when a person, who may legally administer medication, is available.
  - 6.1.1.1.1 Doses may be provided for up to one week, unless covering an Approved School Activity lasting longer than this time ~~period,~~ period and shall be maintained in a secure location.
- 6.1.1.2 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~~ healthcare 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.
  - 6.1.1.2.1 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.
- 6.1.1.3 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~~ healthcare provider and shall include the student's name; the licensed ~~health care~~ healthcare provider's name; the name of the medication; the dosage; and how and when it is to be administered.
- 6.1.2 In order to be qualified to provide Assistance with Self-Administration of Medications, 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)(13). Training shall be renewed minimally every five years. No person shall provide Assistance with Self-Administration of Medications without documented acknowledgment to the Department of Education that ~~he/she has~~ they have completed the course and that ~~he/she understands~~ they understand the same, and will abide by the safe practices and procedures set forth therein. A School Nurse shall:
  - 6.1.2.1 Complete instructor training as designated by the Department of Education.
  - 6.1.2.2 Oversee the training for Educators and Other School Employees.
  - 6.1.2.3 Coordinate the collection and review of the written parental consent.
  - 6.1.2.4 Provide the appropriately labeled medication, copy of the consent, and directions on assistance to the Trained Assistant for Self-Administration.
- 6.1.3 Each School shall maintain a record of all students receiving Assistance with Self-Administration of 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.
- 6.1.4 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~~ their 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 subsection 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.
- 6.2 District and charter school boards may develop policies for unique Approved School Activities for which the specified process is unable to be implemented.

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

**19 DE Reg. 622 (01/01/16)**

## **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~~ 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 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 (2) secure and accessible locations in the school setting as identified by the School Nurse: one for the School Nurse and the other 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.

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

**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.

**9.0 Self-Use of Hand Sanitizer**

- 9.1 Annually each district and charter school shall publish on its website, and through at least one (1) other format, that Hand Sanitizer will be available for student use.
- 9.1.1 The parent, guardian or relative caregiver shall be provided a process for their child to be identified as unable to use Hand Sanitizer.
- 9.1.2 The parent, guardian or relative caregiver shall be provided a process for their child to receive assistance on self-use of Hand Sanitizer.
- 9.1.3 Any information received pursuant to subsections 9.1.1 and 9.1.2 shall be maintained in the student's Cumulative Record File.
- 9.1.4 Relevant school personnel shall be made aware of any student identified in subsections 9.1.1 and 9.1.2.

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, an insulin pump or administration of medical marijuana oil.

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.

Nonregulatory note: 16 Del.C. §4904A provides exceptions for the administration of medical marijuana oil by a parent or designated caregivers.

**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)**  
**19 DE Reg. 622 (01/01/16)**  
**20 DE Reg. 445 (12/01/16)**  
**24 DE Reg. 105 (08/01/20) (Prop.)**