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I N S E N A T E

May 2, 2013

Introduced by Sens. BOYLE, AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Education -- recommended to the Committee on Education in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading -- again amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the education law, in relation to authorizing the use of nebulizers in schools; and to amend chapter 672 of the laws of 2007, amending the education law relating to the maintenance of on-site nebulizers, in relation to the effectiveness of certain provisions thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 919 of the education law, as amended by chapter 42
2 of the laws of 2008, is amended to read as follows:
3 S 919. On-site nebulizers. 1. The board of education or trustees of
4 the school district responsible for providing health services in a
5 school, or the board of cooperative educational services in the case of
6 programs under its jurisdiction, shall make a nebulizer available
7 on-site in every public and private school building in which full or
8 part time nurse services are provided. Nebulizers in such school build-
9 ings shall be made available to allow reasonable access to all public
10 and private school students with a patient specific order, who require
11 inhaled medications administered by a nebulizer, provided, however, that
12 nebulizers shall be administered by a school nurse [or], physician OR
13 OTHER LICENSED PROFESSIONAL AUTHORIZED TO PERFORM SUCH SERVICES UNDER
14 TITLE EIGHT OF THIS CHAPTER pursuant to the student's patient specific
15 order. Every nebulizer shall be maintained in working order by the
16 school district or board of cooperative educational services that

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 provides school health services to the school building where the nebu-
2 lizer is located. NEBULIZERS AT SUCH LOCATIONS SHALL ALSO BE MADE
3 AVAILABLE TO PUBLIC AND PRIVATE SCHOOL STUDENTS WHO HAVE BEEN DIAGNOSED
4 BY A PHYSICIAN OR OTHER DULY AUTHORIZED HEALTH CARE PROVIDER WITH AN
5 ASTHMATIC CONDITION OR ANOTHER RESPIRATORY DISEASE TO SELF-ADMINISTER
6 INHALED MEDICATIONS THROUGH SUCH NEBULIZER TO ALLEVIATE RESPIRATORY
7 SYMPTOMS OR TO PREVENT THE ONSET OF EXERCISE INDUCED ASTHMATIC SYMPTOMS
8 DURING THE SCHOOL DAY ON SCHOOL PROPERTY AND AT ANY SCHOOL FUNCTION AS
9 SUCH TERMS ARE DEFINED, RESPECTIVELY, BY SUBDIVISIONS ONE AND TWO OF
10 SECTION ELEVEN OF THIS CHAPTER, WITH THE WRITTEN PERMISSION OF A PHYSI-
11 CIAN OR OTHER DULY AUTHORIZED HEALTH CARE PROVIDER, AND WRITTEN PARENTAL
12 CONSENT. THE WRITTEN PERMISSION SHALL INCLUDE AN ATTESTATION BY THE
13 PHYSICIAN OR THE HEALTH CARE PROVIDER CONFIRMING THE FOLLOWING: (A) THE
14 PUPIL IS DIAGNOSED WITH ASTHMA OR ANOTHER RESPIRATORY DISEASE FOR WHICH
15 INHALED MEDICATIONS ARE PRESCRIBED TO ALLEVIATE RESPIRATORY SYMPTOMS OR
16 TO PREVENT THE ONSET OF EXERCISE INDUCED ASTHMATIC SYMPTOMS; AND (B)
17 THAT THE PUPIL HAS DEMONSTRATED THAT HE OR SHE CAN SELF-ADMINISTER THE
18 PRESCRIBED INHALED MEDICATION THROUGH A NEBULIZER EFFECTIVELY. THE WRIT-
19 TEN PERMISSION SHALL ALSO INCLUDE THE NAME OF THE PRESCRIBED INHALED
20 MEDICATION, THE DOSE, THE TIMES WHEN THE MEDICATION IS TO BE TAKEN, THE
21 CIRCUMSTANCES WHICH MAY WARRANT THE USE OF THE MEDICATION AND THE LENGTH
22 OF TIME FOR WHICH THE NEBULIZER IS PRESCRIBED. IN ADDITION, ANY MEDICA-
23 TION PROVIDED BY THE PUPIL'S PARENTS OR PERSONS IN PARENTAL RELATION FOR
24 USE IN A NEBULIZER SHALL BE MADE AVAILABLE TO THE PUPIL AS NEEDED IN
25 ACCORDANCE WITH THE SCHOOL DISTRICT'S OR BOARD OF COOPERATIVE EDUCA-
26 TIONAL SERVICES' POLICY AND THE ORDERS PRESCRIBED IN THE WRITTEN PERMIS-
27 SION OF THE PHYSICIAN OR OTHER AUTHORIZED HEALTH CARE PROVIDER.

28 2. THE BOARD OF EDUCATION OR TRUSTEES OF A SCHOOL DISTRICT RESPONSIBLE
29 FOR PROVIDING HEALTH SERVICES IN A SCHOOL, THE BOARD OF COOPERATIVE
30 EDUCATIONAL SERVICES IN THE CASE OF PROGRAMS UNDER ITS JURISDICTION, OR
31 A NON-PUBLIC SCHOOL MAY MAKE A NEBULIZER AVAILABLE ON SCHOOL PROPERTY
32 AND AT ANY SCHOOL FUNCTION AS SUCH TERMS MAY BE DEFINED, RESPECTIVELY,
33 BY SUBDIVISIONS ONE AND TWO OF SECTION ELEVEN OF THIS CHAPTER. ANY NEBU-
34 LIZER MADE AVAILABLE UNDER THIS SUBDIVISION MAY BE MADE AVAILABLE TO
35 PUBLIC AND PRIVATE SCHOOL STUDENTS WITH A PATIENT SPECIFIC ORDER, WHO
36 REQUIRE INHALED MEDICATIONS ADMINISTERED BY A NEBULIZER, PROVIDED,
37 HOWEVER, THAT NEBULIZERS SHALL BE ADMINISTERED BY A SCHOOL NURSE, PHYSI-
38 CIAN OR OTHER LICENSED PROFESSIONAL AUTHORIZED TO PROVIDE SUCH SERVICES
39 UNDER TITLE EIGHT OF THIS CHAPTER PURSUANT TO THE STUDENT'S PATIENT
40 SPECIFIC ORDER. EVERY NEBULIZER MADE AVAILABLE UNDER THIS SUBDIVISION
41 SHALL BE MAINTAINED IN WORKING ORDER BY THE SCHOOL DISTRICT OR BOARD OF
42 COOPERATIVE EDUCATIONAL SERVICES THAT PROVIDES SCHOOL HEALTH SERVICES;
43 PROVIDED, HOWEVER, THAT NON-PUBLIC SCHOOLS SHALL MAINTAIN IN WORKING
44 ORDER EVERY NEBULIZER PROVIDED BY A NON-PUBLIC SCHOOL. NEBULIZERS
45 PROVIDED BY THE SCHOOL DISTRICT, BOARD OF COOPERATIVE EDUCATIONAL
46 SERVICES OR NON-PUBLIC SCHOOL SHALL ALSO BE MADE AVAILABLE TO PUBLIC AND
47 PRIVATE SCHOOL STUDENTS WHO HAVE BEEN DIAGNOSED BY A PHYSICIAN OR OTHER
48 DULY AUTHORIZED HEALTH CARE PROVIDER WITH AN ASTHMATIC CONDITION OR
49 ANOTHER RESPIRATORY DISEASE TO SELF-ADMINISTER INHALED MEDICATIONS
50 THROUGH SUCH NEBULIZER TO ALLEVIATE RESPIRATORY SYMPTOMS OR TO PREVENT
51 THE ONSET OF EXERCISE INDUCED ASTHMATIC SYMPTOMS DURING THE SCHOOL DAY
52 ON SCHOOL PROPERTY AND AT ANY SCHOOL FUNCTION AS SUCH TERMS ARE DEFINED,
53 RESPECTIVELY, BY SUBDIVISIONS ONE AND TWO OF SECTION ELEVEN OF THIS
54 CHAPTER, WITH THE WRITTEN PERMISSION OF A PHYSICIAN OR OTHER DULY
55 AUTHORIZED HEALTH CARE PROVIDER, AND WRITTEN PARENTAL CONSENT. THE WRIT-
56 TEN PERMISSION SHALL INCLUDE AN ATTESTATION BY THE PHYSICIAN OR THE

1 HEALTH CARE PROVIDER CONFIRMING THE FOLLOWING: (A) THE PUPIL IS DIAG-
2 NOSED WITH ASTHMA OR ANOTHER RESPIRATORY DISEASE FOR WHICH INHALED MEDI-
3 CATIONS ARE PRESCRIBED TO ALLEVIATE RESPIRATORY SYMPTOMS OR TO PREVENT
4 THE ONSET OF EXERCISE INDUCED ASTHMATIC SYMPTOMS; AND (B) THAT THE PUPIL
5 HAS DEMONSTRATED THAT HE OR SHE CAN SELF-ADMINISTER THE PRESCRIBED
6 INHALED MEDICATION THROUGH A NEBULIZER EFFECTIVELY. THE WRITTEN PERMIS-
7 SION SHALL ALSO INCLUDE THE NAME OF THE PRESCRIBED INHALED MEDICATION,
8 THE DOSE, THE TIMES WHEN THE MEDICATION IS TO BE TAKEN, THE CIRCUM-
9 STANCES WHICH MAY WARRANT THE USE OF THE MEDICATION AND THE LENGTH OF
10 TIME FOR WHICH THE NEBULIZER IS PRESCRIBED. IN ADDITION, ANY MEDICATION
11 PROVIDED BY THE PUPIL'S PARENTS OR PERSONS IN PARENTAL RELATION FOR USE
12 IN A NEBULIZER SHALL BE MADE AVAILABLE TO THE PUPIL AS NEEDED IN ACCORD-
13 ANCE WITH THE SCHOOL DISTRICT'S OR BOARD OF COOPERATIVE EDUCATIONAL
14 SERVICES' POLICY AND THE ORDERS PRESCRIBED IN THE WRITTEN PERMISSION OF
15 THE PHYSICIAN OR OTHER AUTHORIZED HEALTH CARE PROVIDER.

16 3. A SCHOOL DISTRICT, BOARD OF COOPERATIVE EDUCATIONAL SERVICES, NON-
17 PUBLIC SCHOOL AND/OR THEIR AGENTS OR EMPLOYEES SHALL INCUR NO LEGAL OR
18 FINANCIAL LIABILITY AS A RESULT OF ANY HARM OR INJURY SUSTAINED BY A
19 PUPIL OR OTHER PERSON CAUSED BY REASONABLE AND GOOD FAITH COMPLIANCE
20 WITH THIS SECTION.

21 4. The commissioner shall be authorized to promulgate regulations for
22 the implementation of this section.

23 S 2. Section 2 of chapter 672 of the laws of 2007 amending the educa-
24 tion law relating to the maintenance of on-site nebulizers, is amended
25 to read as follows:

26 S 2. This act shall take effect September 1, 2007; provided, however,
27 that if upon such effective date, an appropriation to the education
28 department shall not have been made for FULL reimbursement of school
29 districts and boards of cooperative educational services for the
30 purposes of implementing the provisions of SUBDIVISION 1 OF section 919
31 of the education law, as added by section one of this act, then [this
32 act] SUBDIVISION 1 OF SECTION 919 OF THE EDUCATION LAW shall take effect
33 on the forty-fifth day after such an appropriation is made, and
34 provided, further, that the division of the budget shall notify the
35 legislative bill drafting commission on September 1, 2007 whether such
36 an appropriation has been made, and if such appropriation shall not have
37 been made on or before such date, the division of the budget shall noti-
38 fy the legislative bill drafting commission upon the date such an appro-
39 priation shall have been made, in order that the commission may maintain
40 an accurate and timely effective data base of the official text of the
41 laws of the state of New York in furtherance of effectuating the
42 provisions of section 44 of the legislative law and section 70-b of the
43 public officers law.

44 S 3. This act shall take effect immediately; provided however, that
45 the amendments to subdivision 1 of section 919 of the education law made
46 by section one of this act shall take effect on the same date and in the
47 same manner as such subdivision takes effect pursuant to chapter 672 of
48 the laws of 2007, as amended.