S T A T E O F N E W Y O R K

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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 -- recommitted 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:

Section 1. Section 919 of the education law, as amended by chapter 42 of the laws of 2008, is amended to read as follows:

S 919. On-site nebulizers. 1. The board of education or trustees of the school district responsible for providing health services in a school, or the board of cooperative educational services in the case of programs under its jurisdiction, shall make a nebulizer available on-site in every public and private school building in which full or part time nurse services are provided. Nebulizers in such school buildings shall be made available to allow reasonable access to all public and private school students with a patient specific order, who require inhaled medications administered by a nebulizer, provided, however, that nebulizers shall be administered by a school nurse [or], physician OR OTHER LICENSED PROFESSIONAL AUTHORIZED TO PERFORM SUCH SERVICES UNDER TITLE EIGHT OF THIS CHAPTER pursuant to the student's patient specific order. Every nebulizer shall be maintained in working order by the 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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provides school health services to the school building where the nebulizer is located. NEBULIZERS AT SUCH LOCATIONS SHALL ALSO BE MADE AVAILABLE TO PUBLIC AND PRIVATE SCHOOL STUDENTS WHO HAVE BEEN DIAGNOSED BY A PHYSICIAN OR OTHER DULY AUTHORIZED HEALTH CARE PROVIDER WITH AN ASTHMATIC CONDITION OR ANOTHER RESPIRATORY DISEASE TO SELF-ADMINISTER INHALED MEDICATIONS THROUGH SUCH NEBULIZER TO ALLEVIATE RESPIRATORY SYMPTOMS OR TO PREVENT THE ONSET OF EXERCISE INDUCED ASTHMATIC SYMPTOMS DURING THE SCHOOL DAY ON SCHOOL PROPERTY AND AT ANY SCHOOL FUNCTION AS SUCH TERMS ARE DEFINED, RESPECTIVELY, BY SUBDIVISIONS ONE AND TWO OF SECTION ELEVEN OF THIS CHAPTER, WITH THE WRITTEN PERMISSION OF A PHYSICIAN OR OTHER DULY AUTHORIZED HEALTH CARE PROVIDER, AND WRITTEN PARENTAL CONSENT. THE WRITTEN PERMISSION SHALL INCLUDE AN ATTESTATION BY THE PHYSICIAN OR THE HEALTH CARE PROVIDER CONFIRMING THE FOLLOWING: (A) THE PUPIL IS DIAGNOSED WITH ASTHMA OR ANOTHER RESPIRATORY DISEASE FOR WHICH INHALED MEDICATIONS ARE PRESCRIBED TO ALLEVIATE RESPIRATORY SYMPTOMS OR TO PREVENT THE ONSET OF EXERCISE INDUCED ASTHMATIC SYMPTOMS; AND (B) THAT THE PUPIL HAS DEMONSTRATED THAT HE OR SHE CAN SELF-ADMINISTER THE PRESCRIBED INHALED MEDICATION THROUGH A NEBULIZER EFFECTIVELY. THE WRITTEN PERMISSION SHALL ALSO INCLUDE THE NAME OF THE PRESCRIBED INHALED MEDICATION, THE DOSE, THE TIMES WHEN THE MEDICATION IS TO BE TAKEN, THE CIRCUMSTANCES WHICH MAY WARRANT THE USE OF THE MEDICATION AND THE LENGTH OF TIME FOR WHICH THE NEBULIZER IS PRESCRIBED. IN ADDITION, ANY MEDICATION PROVIDED BY THE PUPIL'S PARENTS OR PERSONS IN PARENTAL RELATION FOR USE IN A NEBULIZER SHALL BE MADE AVAILABLE TO THE PUPIL AS NEEDED IN ACCORDANCE WITH THE SCHOOL DISTRICT'S OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES' POLICY AND THE ORDERS PRESCRIBED IN THE WRITTEN PERMISSION OF THE PHYSICIAN OR OTHER AUTHORIZED HEALTH CARE PROVIDER.

2. THE BOARD OF EDUCATION OR TRUSTEES OF A SCHOOL DISTRICT RESPONSIBLE FOR PROVIDING HEALTH SERVICES IN A SCHOOL, THE BOARD OF COOPERATIVE EDUCATIONAL SERVICES IN THE CASE OF PROGRAMS UNDER ITS JURISDICTION, OR A NON-PUBLIC SCHOOL MAY MAKE A NEBULIZER AVAILABLE ON SCHOOL PROPERTY AND AT ANY SCHOOL FUNCTION AS SUCH TERMS MAY BE DEFINED, RESPECTIVELY, BY SUBDIVISIONS ONE AND TWO OF SECTION ELEVEN OF THIS CHAPTER. ANY NEBULIZER MADE AVAILABLE UNDER THIS SUBDIVISION MAY BE MADE AVAILABLE TO PUBLIC AND PRIVATE SCHOOL STUDENTS WITH A PATIENT SPECIFIC ORDER, WHO REQUIRE INHALED MEDICATIONS ADMINISTERED BY A NEBULIZER, PROVIDED, HOWEVER, THAT NEBULIZERS SHALL BE ADMINISTERED BY A SCHOOL NURSE, PHYSICIAN OR OTHER LICENSED PROFESSIONAL AUTHORIZED TO PROVIDE SUCH SERVICES UNDER TITLE EIGHT OF THIS CHAPTER PURSUANT TO THE STUDENT'S PATIENT SPECIFIC ORDER. EVERY NEBULIZER MADE AVAILABLE UNDER THIS SUBDIVISION SHALL BE MAINTAINED IN WORKING ORDER BY THE SCHOOL DISTRICT OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES THAT PROVIDES SCHOOL HEALTH SERVICES; PROVIDED, HOWEVER, THAT NON-PUBLIC SCHOOLS SHALL MAINTAIN IN WORKING ORDER EVERY NEBULIZER PROVIDED BY A NON-PUBLIC SCHOOL. NEBULIZERS PROVIDED BY THE SCHOOL DISTRICT, BOARD OF COOPERATIVE EDUCATIONAL SERVICES OR NON-PUBLIC SCHOOL SHALL ALSO BE MADE AVAILABLE TO PUBLIC AND PRIVATE SCHOOL STUDENTS WHO HAVE BEEN DIAGNOSED BY A PHYSICIAN OR OTHER DULY AUTHORIZED HEALTH CARE PROVIDER WITH AN ASTHMATIC CONDITION OR ANOTHER RESPIRATORY DISEASE TO SELF-ADMINISTER INHALED MEDICATIONS THROUGH SUCH NEBULIZER TO ALLEVIATE RESPIRATORY SYMPTOMS OR TO PREVENT THE ONSET OF EXERCISE INDUCED ASTHMATIC SYMPTOMS DURING THE SCHOOL DAY ON SCHOOL PROPERTY AND AT ANY SCHOOL FUNCTION AS SUCH TERMS ARE DEFINED, RESPECTIVELY, BY SUBDIVISIONS ONE AND TWO OF SECTION ELEVEN OF THIS CHAPTER, WITH THE WRITTEN PERMISSION OF A PHYSICIAN OR OTHER DULY AUTHORIZED HEALTH CARE PROVIDER, AND WRITTEN PARENTAL CONSENT. THE WRITTEN PERMISSION SHALL INCLUDE AN ATTESTATION BY THE PHYSICIAN OR THE

HEALTH CARE PROVIDER CONFIRMING THE FOLLOWING: (A) THE PUPIL IS DIAGNOSED WITH ASTHMA OR ANOTHER RESPIRATORY DISEASE FOR WHICH INHALED MEDICATIONS ARE PRESCRIBED TO ALLEVIATE RESPIRATORY SYMPTOMS OR TO PREVENT THE ONSET OF EXERCISE INDUCED ASTHMATIC SYMPTOMS; AND (B) THAT THE PUPIL HAS DEMONSTRATED THAT HE OR SHE CAN SELF-ADMINISTER THE PRESCRIBED INHALED MEDICATION THROUGH A NEBULIZER EFFECTIVELY. THE WRITTEN PERMISSION SHALL ALSO INCLUDE THE NAME OF THE PRESCRIBED INHALED MEDICATION, THE DOSE, THE TIMES WHEN THE MEDICATION IS TO BE TAKEN, THE CIRCUMSTANCES WHICH MAY WARRANT THE USE OF THE MEDICATION AND THE LENGTH OF TIME FOR WHICH THE NEBULIZER IS PRESCRIBED. IN ADDITION, ANY MEDICATION PROVIDED BY THE PUPIL'S PARENTS OR PERSONS IN PARENTAL RELATION FOR USE IN A NEBULIZER SHALL BE MADE AVAILABLE TO THE PUPIL AS NEEDED IN ACCORDANCE WITH THE SCHOOL DISTRICT'S OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES' POLICY AND THE ORDERS PRESCRIBED IN THE WRITTEN PERMISSION OF THE PHYSICIAN OR OTHER AUTHORIZED HEALTH CARE PROVIDER.

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

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

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

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

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