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

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2009-2010 Regular Sessions

I N A S S E M B L Y

February 17, 2009

Introduced by M. of A. ORTIZ, ROBINSON, JACOBS, MILLMAN -- Multi-Sponsored by -- M. of A. BOYLAND, DIAZ, FIELDS, HOOPER, JOHN, MAYERSOHN, PERRY, PHEFFER, J. RIVERA, TOWNS, WEISENBERG, WRIGHT -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to the use of inhalers and nebulizers

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

Section 1. Section 916 of the education law, as amended by chapter 524 of the laws of 2006, is amended to read as follows:

S 916. Pupils afflicted with asthma OR OTHER POTENTIALLY LIFE-THREATENING ILLNESSES. 1. The board of education or trustees of each school district and board of cooperative educational services shall allow pupils who have been diagnosed by a physician or other duly authorized health care provider with a severe asthmatic condition OR OTHER POTENTIALLY LIFE-THREATENING ILLNESS to carry and use a prescribed inhaler during the school day, with the written permission of a physician or other duly authorized health care provider, and parental consent, based on such physician's or provider's determination that such pupil is subject to sudden asthmatic attacks severe enough to debilitate such pupil. A record of such permission shall be maintained in the school office. In addition, upon the written request of a parent or person in parental relation, the board of education or trustees of a school district and board of cooperative educational services shall allow such pupils to maintain an extra such inhaler in the care and custody of a registered professional nurse employed by such district or board of cooperative educational services. Nothing in this section shall require a school district or board of cooperative educational services to retain a school nurse solely for the purpose of taking custody of a spare inhaler, or require that a school nurse be available at all times in a school building for such purpose.

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

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2. THE BOARD OF EDUCATION OR TRUSTEES OF EACH SCHOOL DISTRICT OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES THAT HAS ALLOWED THE USE OF AN INHALER BY A STUDENT PURSUANT TO THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION SHALL INFORM THE PARENTS, GUARDIANS OR PERSONS IN PARENTAL RELATION TO THE PUPIL IN WRITING THAT THE SCHOOL DISTRICT OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES AND ITS EMPLOYEES OR AGENTS SHALL INCUR NO LIABILITY AS A RESULT OF ANY INJURY ARISING FROM THE SELF-ADMINISTRATION OF MEDICATION BY THE PUPIL. THE PARENTS, GUARDIANS OR PERSONS IN PARENTAL RELATION TO THE PUPIL SHALL SIGN A STATEMENT ACKNOWLEDGING THAT THE DISTRICT OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES SHALL INCUR NO LIABILITY AS A RESULT OF ANY INJURY ARISING FROM THE SELF-ADMINISTRATION OF MEDICATION BY THE PUPIL AND THE PARENTS, GUARDIANS OR PERSONS IN PARENTAL RELATION SHALL INDEMNIFY AND HOLD HARMLESS THE SCHOOL DISTRICT OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES AND ITS EMPLOYEES AND AGENTS ANY CLAIMS ARISING OUT OF THE SELF-ADMINISTRATION OF MEDICATION BY THE PUPIL.

3. THE BOARD OF EDUCATION OR TRUSTEES OF EACH SCHOOL DISTRICT OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES THAT HAS ALLOWED THE USE OF AN INHALER BY A STUDENT PURSUANT TO THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION SHALL PREPARE AN EMERGENCY ACTION PLAN FOR EACH SUCH STUDENT. THE COMMISSIONER, IN CONSULTATION WITH THE COMMISSIONER OF HEALTH AND A PHYSICIAN, SHALL DETERMINE THE INFORMATION, ACTIONS, AND/OR PROCEDURES THAT MUST BE CONTAINED WITHIN EACH PLAN.

S 2. The education law is amended by adding a new section 920 to read as follows:

S 920. USE OF NEBULIZER. 1. EVERY SCHOOL DISTRICT, BOARD OF EDUCATIONAL SERVICES AND NONPUBLIC ELEMENTARY AND SECONDARY SCHOOL IN THIS STATE SHALL REQUIRE AT LEAST ONE NEBULIZER BE MAINTAINED IN THE OFFICE OF THE SCHOOL NURSE OR IN A SIMILAR ACCESSIBLE LOCATION.

2. THE COMMISSIONER SHALL PROMULGATE REGULATIONS FOR THE ADMINISTRATION OF ASTHMA MEDICATION THROUGH THE USE OF A NEBULIZER BY THE SCHOOL NURSE OR PERSON AUTHORIZED BY REGULATION. THE REGULATIONS SHALL INCLUDE:

A. A REQUIREMENT THAT EACH CERTIFIED NURSE OR OTHER PERSON AUTHORIZED TO ADMINISTER ASTHMA MEDICATION IN SCHOOLS RECEIVE TRAINING IN AIRWAY MANAGEMENT AND IN THE USE OF NEBULIZERS AND INHALERS CONSISTENT WITH NATIONALLY RECOGNIZED STANDARDS, INCLUDING, BUT NOT LIMITED TO, THOSE OF THE NATIONAL INSTITUTES OF HEALTH AND THE AMERICAN ASSOCIATION OF ALLERGY AND IMMUNOLOGY; AND

B. A REQUIREMENT THAT EACH PUPIL AUTHORIZED TO USE ASTHMA MEDICATION PURSUANT TO SUBDIVISION ONE OF SECTION NINE HUNDRED SIXTEEN OF THIS ARTICLE OR A NEBULIZER HAVE AN ASTHMA TREATMENT PLAN PREPARED BY THE PHYSICIAN OF THE PUPIL, WHICH IDENTIFY, AT A MINIMUM, ASTHMA TRIGGERS, THE TREATMENT PLAN, AND SUCH OTHER ELEMENTS AS SHALL BE DETERMINED BY THE REGENTS.

3. THE COMMISSIONER SHALL ENSURE THAT ANNUAL ASTHMA EDUCATION OPPORTUNITIES ARE MADE AVAILABLE FOR MEDICAL INSPECTORS AND ALL MEMBERS OF THE TEACHING STAFF.

S 3. This act shall take effect on the one hundred twentieth day after it shall have become a law; provided, however, that effective immediately the commissioner of education is authorized to promulgate rules and regulations for the implementation of this act on such effective date.