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I N   S E N A T E

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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.