STATE OF NEW YORK

2723

2017-2018 Regular Sessions

IN SENATE

January 17, 2017

Introduced by Sens. KLEIN, ALCANTARA, CARLUCCI, DILAN, SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to establishing the asthma prevention and education program (Part A); to amend the public health law, in relation to in-utero exposure to tobacco smoke prevention (Part B); to amend the public health law, in relation to reporting on the incidence of asthma (Part C); to amend the public health law, in relation to including certain respiratory diseases within disease management demonstration programs (Part D); to amend the public health law, in relation to smoking restrictions in certain outdoor areas (Part E); to amend the education law, in relation to requiring all teachers to be trained in identifying and responding to asthma emergencies (Part F); to amend the real property law, in relation to residential rental property smoking policies (Part G); to amend the education law, in relation to requiring school districts and private elementary and secondary schools to establish and implement rules prohibiting the engine of any motor vehicle to remain idling while parked or standing on school grounds (Part H); to amend the education law, in relation to the use of inhalers and nebulizers (Part I); to amend the environmental conservation law, in relation to pesticide alternatives used at schools and day care centers (Part J); and to amend the public buildings law, in relation to curtailing the use of cleaning materials that induce or trigger asthma episodes (Part K)

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act enacts into law major components of legislation which combat the incidence of asthma and other respiratory diseases such as emphysema and chronic bronchitis. Each component is wholly contained within a Part identified as Parts A through K. The effective date for each particular provision contained within such Part is set forth in the

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

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last section of such Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes a reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found. Section four of this act sets forth the general effective date of this act.

§ 2. Legislative findings and purpose. The legislature finds that asthma is a chronic, potentially life-threatening, respiratory illness that affects over a million New Yorkers, including thousands of children and adolescents. Asthma is the leading cause of school absences attributed to chronic conditions. Asthma is also directly linked to large and growing inpatient bills for medicaid and other health care payers. Therefore, the legislature finds that establishing a comprehensive statewide asthma prevention management and control program which coordinates the efforts of individuals, families, health care providers, schools and community-based organizations is in the public interest and would benefit the people of the state of New York.

PART A

Section 1. The public health law is amended by adding a new article 27-BB to read as follows:

ARTICLE 27-BB

ASTHMA DISEASE MANAGEMENT AND CONTROL

Section 2725. Asthma disease management and control program.
2726. Study of asthma incidence and prevalence.
2727. Annual report.

§ 2725. Asthma disease management and control program. 1. There is hereby created within the department the asthma disease management and control program (hereinafter referred to in this article as the "program"). The purpose of the program is to promote asthma disease management and education and outreach about asthma to people who suffer from asthma and their families, health care providers, and the general public.

2. Services to be provided by the program may include:

(a) asthma disease management and case management for patients and their families;

(b) asthma outreach and screening;

(c) the promotion of awareness of the causes of asthma;

(d) education on prevention strategies;

(e) education on proper disease management practices; and

(f) education on available treatment modalities.

3. The commissioner shall make grants within the amounts appropriated therefor to local health agencies, health care providers, schools, school based health centers and community-based organizations, and other organizations with demonstrated interest and expertise in serving persons with asthma to provide the services set out in this section. Grant recipients shall be government entities or not-for-profit organizations.

The commissioner may coordinate grants under this subdivision with the availability of grants from other sources. The commissioner may also accept or seek grants from other sources to enhance the amounts appropriated to the program.

§ 2726. Study of asthma incidence and prevalence. 1. The department shall study the incidence and prevalence of asthma in the state's population and current disease management practices. Such study shall

utilize information obtained pursuant to article twenty-four-F of this chapter, and include:

(a) the cause and nature of the disease;

(b) behavioral and environmental triggers;

(c) an assessment of the need for patient-centered case management to meet specific physical and environmental needs of patients;

(d) outcome evaluations, including, but not limited to, patient perceptions of improvement, signs and symptoms of asthma, pulmonary function, history of asthma exacerbations, pharmacotherapy, assessment of hospital emergency room visits for asthma, and patient-provider communication; and

(e) an assessment of the ability of providers, including non-professionals and health care professionals such as physicians, nurses, pharmacists and respiratory therapists, to systemically instruct and develop asthma management plans for patients and frequently review with patients and their families how to manage and control their asthma.

2. The department shall gather data for monitoring the occurrence, frequency, incidence, cause, effect and severity of asthma.

(a) The department may require the following to report data under this subdivision:

i. the statewide planning and research cooperative system (SPARCS);

ii. health maintenance organizations licensed pursuant to article forty-three of the insurance law or certified pursuant to this chapter or an independent practice association certified or recognized pursuant to this chapter;

iii. other insurers;

iv. the Medicaid (title XIX of the federal social security act) program;

v. health facilities;

vi. health care practitioners;

vii. patients: self reporting;

viii. the department of environmental conservation; and

ix. any other source the commissioner deems appropriate.

(b) The department shall compile and analyze data gathered under paragraph (a) of this subdivision and article twenty-four-F of this chapter, and correlate it with data as to places of employment, areas of residence, schools attended, ages of those afflicted, environmental factors including proximity to source of pollution and such other data as the department deems appropriate.

(c) The department shall maintain and compile reported data in a manner suitable for research purposes and shall collect and make such data available to persons in the manner set forth in subdivision three of this section.

3. Any data collected or reported shall not contain the name of any patient, his or her social security number, or any other information which would permit a patient to be identified. The department shall develop a unique, confidential identifier to be used in the collection of patient information as required by this section.

§ 2727. Annual report. On or before the first of January during the two calendar years next succeeding the effective date of this section and biennially thereafter, the commissioner shall submit a report regarding the status and accomplishments of the program and provide recommendations to the governor, the temporary president and the minority leader of the senate, and the speaker and the minority leader of the assembly. Such report may be submitted in conjunction with the report required by article twenty-four-F of this chapter.

§ 2. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately the commissioner of health is authorized to promulgate any and all rules and regulations and take any other measures necessary to implement the provisions of this act on its effective date.

PART B

Section 1. The public health law is amended by adding a new article 13-I to read as follows:

ARTICLE 13-I

IN-UTERO EXPOSURE TO TOBACCO SMOKE PREVENTION

Section 1399-xx. In-utero exposure prevention.

1399-yy. Programs.

§ 1399-xx. In-utero exposure prevention. 1. Every healthcare provider, healthcare insurer and pregnancy program shall distribute information on the adverse effects of smoking during pregnancy for both firsthand and secondhand smoke. Such adverse effects to the infant include lower birth rates, higher incidence of asthma and obesity, and cognitive and developmental damage.

2. Every healthcare provider shall monitor expectant mothers' smoking statuses and offer continuous tailored discussion of quitting smoking with expectant mothers during their prenatal care.

§ 1399-yy. Programs. The following programs shall be added to existing tobacco control programs for pregnant women or to other pregnancy related programs:

1. Carbon monoxide monitoring;

2. Depression, social support and domestic violence screening and referrals;

3. Referrals for smoking cessation for household members;

4. Ongoing support by counseling and educational materials; and

5. Financial incentives such as shipping voucher or diaper coupons for quitting for more than four weeks.

§ 2. This act shall take effect on the one hundred eightieth day after it shall have become a law. Provided, that effective immediately the commissioner of health is authorized and directed to promulgate any and all rules and regulations, and take any other measures necessary to implement the provisions of this act on its effective date.

PART C

Section 1. The public health law is amended by adding a new article 24-F to read as follows:

ARTICLE 24-F

ASTHMA REPORTING

Section 2499-b. Asthma; duty to report.

2499-c. Reporting.

2499-d. Asthma; reports confidential.

§ 2499-b. Asthma; duty to report. 1. Every physician and other health care provider shall give notice to the department within thirty days of every incident of an asthma attack coming under his or her care, except as otherwise provided.

2. The person in charge of every asthma reporting facility shall give notice to the department within thirty days of every incident of an asthma attack coming under the care of such facility.

3. The department shall establish regulations designating which specific information shall be reported to the department pursuant to this section.

4. A physician or health care provider or asthma reporting facility which violates any provision of this section shall be subject to a civil penalty pursuant to section twelve of this chapter.

5. The notices required by this section shall be upon forms supplied by the commissioner and shall contain such information as shall be required by the commissioner.

6. For the purposes of this section, an "asthma reporting facility" means a hospital as defined in article twenty-eight of this chapter, clinic, any organization certified pursuant to article forty-four of this chapter, or other similar public or private institution.

§ 2499-c. Reporting. 1. The commissioner shall submit biennial reports to the governor, the temporary president of the senate, the speaker of the assembly, the minority leader of the senate and the minority leader of the assembly. The reports shall include an evaluation of the asthma registry as it relates to timeliness, quality and completeness; an evaluation of the utility of the registry for scientific research; an evaluation of the access, timeliness and quality of reporting information to researchers and other similar individuals; an evaluation of the registry's data elements, including treatment, severity of disease, occupation, age and residence; an evaluation of the feasibility and utility of inclusion of occupational history and residence history; and an evaluation of integrating the registry with other databases maintained by state agencies and departments, including the statewide planning and research cooperative system.

2. The commissioner shall submit an annual report to the governor, the temporary president of the senate, the speaker of the assembly, the minority leader of the senate and the minority leader of the assembly. Such report shall include an evaluation of whether the registry is achieving asthma incidence registry goals established by a nationally recognized asthma registry organization, including numerical goals concerning timeliness, quality, and completeness.

§ 2499-d. Asthma; reports confidential. The reports of asthma attacks made pursuant to the provisions of this article shall not be divulged or made public by any person so as to disclose the identity of any person to whom they relate, except in so far as may be authorized in the sanitary code.

§ 2. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the commissioner of health is authorized to promulgate any and all rules and regulations and take any other measures necessary to implement this act on its effective date on or before such date.

PART D

Section 1. Subdivisions 2 and 4 of section 2111 of the public health law, as added by section 21 of part C of chapter 58 of the laws of 2004, are amended to read as follows:

2. The department shall establish the criteria by which individuals will be identified as eligible for enrollment in the demonstration programs. Persons eligible for enrollment in the disease management demonstration program shall be limited to individuals who: receive medical assistance pursuant to title eleven of article five of the social services law and may be eligible for benefits pursuant to title

18 of the social security act (Medicare); are not enrolled in a Medicaid managed care plan, including individuals who are not required or not eligible to participate in Medicaid managed care programs pursuant to section three hundred sixty-four-j of the social services law; are diagnosed with chronic health problems as may be specified by the entity undertaking the demonstration program, including, but not limited to one or more of the following: congestive heart failure, chronic obstructive pulmonary disease, asthma, **emphysema, chronic bronchitis, other respiratory diseases,** diabetes or other chronic health conditions as may be specified by the department; or have experienced or are likely to experience one or more hospitalizations or are otherwise expected to incur excessive costs and high utilization of health care services.

4. The demonstration program shall offer evidence-based services and interventions designed to ensure that the enrollees receive high quality, preventative and cost-effective care, aimed at reducing the necessity for hospitalization or emergency room care or at reducing lengths of stay when hospitalization is necessary. The demonstration program may include screening of eligible enrollees, developing an individualized care management plan for each enrollee and implementing that plan. Disease management demonstration programs that utilize information technology systems that allow for continuous application of evidence-based guidelines to medical assistance claims data and other available data to identify specific instances in which clinical interventions are justified and communicate indicated interventions to physicians, health care providers and/or patients, and monitor physician and health care provider response to such interventions, shall have the enrollees, or groups of enrollees, approved by the department for participation. The services provided by the demonstration program as part of the care management plan may include, but are not limited to, case management, social work, individualized health counselors, multi-behavioral goals plans, claims data management, health and self-care education, drug therapy management and oversight, personal emergency response systems and other monitoring technologies, **systematic chronic health conditions identified for monitoring,** telehealth services and similar services designed to improve the quality and cost-effectiveness of health care services.

§ 2. This act shall take effect immediately.

PART E

Section 1. Legislative intent. The legislature recognizes that exposure to second-hand smoke is known to cause cancer, pneumonia, asthma, bronchitis and heart disease in humans, and to trigger asthma attacks. The legislature finds that prohibiting smoking within a presumptively reasonable minimum distance of fifteen feet from entrances and exits that serve enclosed areas where smoking is prohibited is consistent with such prohibition. This legislation will apply to any individual occupying such area with the purpose of smoking, but provides exceptions for individuals passing through such area. Therefore, the legislature finds that smoking in such area shall be prohibited and owners and other individuals in control of such area are recommended to post signs indicating no smoking areas and providing for fines for violations.

§ 2. Section 1399-o-1 of the public health law, as added by chapter 102 of the laws of 2013, is amended to read as follows:

§ 1399-o-1. Smoking restrictions; certain outdoor areas. 1. **a.** Smoking shall not be permitted and no person shall smoke during the hours between sunrise and sunset, when one or more persons under the age of

twelve are present at any playground. For the purposes of this [~~section~~] subdivision, the term "playground" means an improved area designed, equipped, and set aside for play of six or more children which is not intended for use as an athletic playing field or athletic court, and shall include any play equipment, surfacing, fencing, signs, internal pathways, internal land forms, vegetation, and related structures. Playgrounds or playground equipment constructed upon one, two and three-family residential real property are exempt from the requirements of this [~~section~~] subdivision. This [~~section~~] subdivision shall not apply to any playground located within the city of New York.

[~~2.~~] b. No police officer, peace officer, regulatory officer or law enforcement official may arrest, ticket, stop or question any person based solely or in part on an alleged violation of paragraph a of this subdivision [~~one of this section~~], nor may an alleged violation of paragraph a of this subdivision [~~one of this section~~] support probable cause to conduct any search or limited search of any person or his or her immediate surroundings.

2. a. Smoking is prohibited within a presumptively reasonable minimum distance of fifteen feet from entrances or exits of public buildings or private buildings that contain state or municipal offices or educational facilities for elementary or secondary school students. Such distance shall become a designated no smoking zone.

b. Local health departments are authorized to adopt regulations as are required to implement this subdivision. Any penalty assessed and recovered in an action brought under this subdivision shall be paid to and used by the municipality bringing the action.

c. This subdivision shall not apply to individuals walking through the designated no smoking zone of such area for the purpose of getting to another destination, but shall only apply to individuals occupying the designated no smoking zone for the purpose of smoking.

d. Any person violating the provisions of this subdivision shall be guilty of a violation, and is subject to a fine of thirty-five dollars.

e. The commissioner may recommend designs for signs which may be used by the owners, operators, managers, employers or other persons, at their option, who control areas where smoking is prohibited pursuant to section thirteen hundred ninety-nine-o of this article. Such signs shall include the warning that "smoking in this area is punishable by law and all violators shall be subject to a fine of thirty-five dollars."

f. Nothing contained in this subdivision is intended to regulate smoking in a private residence or in the general public outdoors, excepting places in which smoking is prohibited through the local fire department, or by other law, ordinance or regulation.

§ 3. This act shall take effect on the one hundred twentieth day after it shall have become a law.

PART F

Section 1. The education law is amended by adding a new section 3001-e to read as follows:

§ 3001-e. Asthma emergencies; training in identification and response. The commissioner, in consultation with the commissioner of health, shall establish standards for the training of teachers and other appropriate personnel in identifying and responding to asthma emergencies in pupils and other persons. Such standards shall specify minimum levels of knowledge and procedures to be followed. Such standards shall permit train-

ing to be given by persons or organizations deemed qualified to do so by the commissioner.

§ 2. This act shall take effect one year after it shall have become a law.

PART G

Section 1. The real property law is amended by adding a new section 235-h to read as follows:

§ 235-h. Residential rental property smoking policies. Every rental agreement for a dwelling unit, in a multiple dwelling building with four or more units, shall include a disclosure of the smoking policy for the premises on which the dwelling unit is located. The disclosure must state whether smoking is prohibited on the premises, allowed on the entire premises or allowed in limited areas on the premises. If the smoking policy allows smoking in limited areas on the premises, the disclosure must identify the areas on the premises where smoking is allowed.

§ 2. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.

PART H

Section 1. The education law is amended by adding a new section 1527-a to read as follows:

§ 1527-a. Idling motor vehicles on school grounds. 1. On or before September first, two thousand nineteen and consistent with the commissioner's regulations, adopted pursuant to section thirty-six hundred thirty-seven of this chapter, the board of education or board of trustees of every school district and the governing body of every private elementary or secondary school in the state shall promulgate and implement rules prohibiting the engine of any motor vehicle, as defined in section one hundred twenty-five of the vehicle and traffic law, to remain idling for more than one minute while such vehicle is parked or standing on school grounds, adjacent to school grounds, or in front of any school while loading or off loading passengers.

2. Each school district and private elementary and secondary school shall conspicuously post signs upon, adjacent and in front of school grounds advising operators of motor vehicles of the provisions of the rules adopted pursuant to subdivision one of this section.

§ 2. This act shall take effect immediately.

PART I

Section 1. The education law is amended by adding a new section 923 to read as follows:

§ 923. Use of nebulizer. 1. Every school district and board of cooperative educational services in this state may maintain one or more nebulizers in the office of the school nurse or in a similar accessible location.

2. The commissioner, in consultation with the commissioner of health, may 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 may 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; 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.

§ 2. This act shall take effect on the one hundred eightieth 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.

PART J

Section 1. Subdivision 7 of section 33-0303 of the environmental conservation law, as added by chapter 85 of the laws of 2010, is amended to read as follows:

7. The commissioner, in consultation with the commissioner of education and the commissioner of health, shall develop guidance and regulations on pesticide alternatives to facilitate compliance with section four hundred nine-k of the education law and three hundred ninety-g of the social services law. Provided, further, that such pesticide alternatives shall help to minimize the incidence of asthma attacks in public and private buildings and residences, while still effectively controlling the targeted pest or organism. Such regulations shall provide for the use of the least toxic pesticide or pesticides, which effectively eradicates the targeted pest or organism.

§ 2. This act shall take effect immediately.

PART K

Section 1. The public buildings law is amended by adding a new section 144 to read as follows:

§ 144. Curtail use of chemicals that induce or trigger asthma attacks. 1. Notwithstanding any other provision of law to the contrary, the superintendent of every state public building, and of every transportation facility operated by a public authority, public benefit corporation or municipality shall to the best of his or her ability curtail the use of cleaning materials or chemicals, exposure to which may cause either the building cleaning staff or other persons who enter such building to develop the disease of asthma, or which may exacerbate or trigger an asthma attack.

2. A determination of which or the quantity or concentration of such cleaning materials or chemicals exposure to which may cause persons to develop the disease of asthma, or which may exacerbate or trigger an asthma attack, shall be made by the commissioner of health who shall promulgate a list of such cleaning materials or chemicals.

§ 2. This act shall take effect on the one hundred eightieth day after it shall have become a law.

§ 3. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judg-

ment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 4. This act shall take effect immediately provided, however, that the applicable effective date of Parts A through K of this act shall be as specifically set forth in the last section of such Parts.