# STATE OF NEW YORK

218

2019-2020 Regular Sessions

# IN SENATE

(Prefiled)

January 9, 2019

Introduced by Sen. BENJAMIN -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, the education law and the penal law, in relation to requiring anaphylactic policies for child care services

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

Section 1. This act shall be known and may be cited as "Elijah's Law".

§ 2. Section 2500-h of the public health law, as added by chapter 579 of the laws of 2007, is amended to read as follows:

§ 2500-h. Anaphylactic policy for [~~school districts~~] child care service providers. 1. For purposes of this section "child care service" or "child care service provider" shall mean care for any child under the age of eighteen provided on a regular basis away from the child's residence for less than twenty-four hours per day by someone other than the parent, step-parent, guardian, or relative within the third degree of consanguinity of the parents or step-parents of such child; and shall include, but not be limited to: all public and private elementary and secondary schools; group family day care home, family day care home and school age child care as such terms are defined in section three hundred ninety of the social services law; a day camp as defined in the state sanitary code; an after-school program operated for the purpose of religious education, sports, or recreation; a facility providing day services under an operating certificate issued by the department, the office of mental health or office for people with developmental disabilities; a kindergarten, pre-kindergarten or nursery school for children three years of age or older; an after-school program for children operated by a public school district or by a private school or academy which is providing elementary or secondary education or both.

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

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2. The commissioner[~~, in consultation with the commissioner of education, shall establish an anaphylactic policy for school districts setting forth guidelines and procedures to be followed for both~~] shall adopt an anaphylactic policy which shall conform to the Voluntary Guidelines for Managing Food Allergies In Schools and Early Care and Education Programs promulgated by the United States department of health and human services for all child care services. Such anaphylactic policy shall be followed for both the prevention of anaphylaxis and during a medical emergency resulting from anaphylaxis. Such anaphylactic policy shall be [~~developed~~] implemented after consultation with representatives of pediatric physicians, [~~school nurses~~] and other health care providers with expertise in treating children with anaphylaxis, parents of children with life threatening allergies, [~~school administrators, teachers, school food service directors~~] and appropriate not-for-profit corporations representing allergic individuals at risk for anaphylaxis.

[~~2.~~] 3. The anaphylactic policy established by [~~subdivision one of~~] this section shall include the following:

(a) a procedure and treatment plan, including responsibilities for school nurses and other appropriate school personnel and every child care service provider, for responding to anaphylaxis;

(b) a training course for appropriate [~~school~~] personnel for preventing and responding to anaphylaxis;

(c) a procedure and appropriate guidelines for the development of an individualized emergency health care plan for children with a food or other allergy which could result in anaphylaxis;

(d) a communication plan for intake and dissemination of information regarding children with a food or other allergy which could result in anaphylaxis; [~~and~~]

(e) strategies for the reduction of the risk of exposure to anaphylactic causative agents, including food and other allergens;

(f) a communication plan for discussion with anaphylactic children about foods that are safe and unsafe for the child, and about strategies to avoid exposure to unsafe food; and

(g) a requirement that each child care service provider shall have an onsite mechanism, including but not limited to auto injectors that are current and not expired, that will immediately reduce the effects of any life-threatening allergies.

[~~3. On or before June thirtieth, two thousand eight~~] 4. Six months after the effective date of the chapter of the laws of two thousand nineteen that amended this section, an anaphylactic policy shall be jointly forwarded by the commissioner and the commissioner of education to each [~~local school board of education, charter school, and board of cooperative educational services~~] child care service provider in the state. [~~Each such board and charter school~~] Every child care service provider shall [~~consider and take action in response to~~] implement such anaphylactic policy within ninety days of receiving such anaphylactic policy from such commissioners.

5. (a) Any willful or negligent violation of this section by a child care service provider shall result in a civil penalty not to exceed five thousand dollars for each violation.

(b) If a child care service provider fails to implement the guidelines and anaphylactic policy pursuant to this section, such child care service provider's license or registration shall be revoked. A child care service provider may, by written request to the commissioner and in the commissioner's discretion, be granted an extension of time to implement the anaphylactic policy required pursuant to this section.

**6. The commissioner, in consultation with the commissioner of education and the commissioner of the office of children and family services shall develop and implement a plan for reporting, inspecting and monitoring of child care services to ensure compliance with this section.**

§ 3. Paragraph (f) of subdivision 2 of section 3000-c of the public health law, as added by chapter 373 of the laws of 2016, is amended to read as follows:

(f) [~~Nothing in~~] **The provisions of** this section shall **not** require [~~any~~] **an** eligible person or entity **which is not a child care service as defined in section twenty-five hundred-h of this chapter** to acquire, possess, store, make available, or administer an epinephrine auto-injector.

§ 4. Section 921-a of the education law, as amended by chapter 200 of the laws of 2017, is amended to read as follows:

§ 921-a. On-site epinephrine auto-injector. 1. School districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools in this state [~~may~~] **shall** provide and maintain on-site in each instructional school facility epinephrine auto-injectors in quantities and types deemed by the commissioner, in consultation with the commissioner of health, to be adequate to ensure ready and appropriate access for use during emergencies to any student or staff having anaphylactic symptoms whether or not there is a previous history of severe allergic reaction.

2. School districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools in this state, any person employed by any such entity, or employed by a contractor of such an entity while performing services for the entity may administer epinephrine auto-injectors in the event of an emergency pursuant to the requirements of section three thousand-c of the public health law.

§ 5. Section 260.10 of the penal law is amended by adding a new subdivision 4 to read as follows:

**4. Being a child care service provider, he or she fails to comply with the provisions of the anaphylactic policies adopted by the commissioner of health pursuant to section twenty-five hundred-h of the public health law, including the required availability and use of an epinephrine auto-injector, which results in harm to a child under the care of such child care service provider.**

§ 6. This act shall take effect immediately.