

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 817

FINAL

REGULATORY IMPLEMENTING ORDER

817 Medications and Treatments

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 **DE Admin. Code** 817 Medications and Treatments to include the addition of definitions, clarification of the process for the administration of medications and treatments, and also changes to reflect recent amendments to 24 **Del.C.**, Section 1921(a)(7) relating to who may assist students with medications and when they may do so.

Notice of the revised proposed regulation was published in the *News Journal* and the *Delaware State News* on January 5, 2013, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. The Department has amended the proposed regulation in response by adding a definition of "dose" or "dosage"; clarifying the storage of controlled medications in section 5.1.1.2.1; and making a grammatical correction. In response to an additional comment, the Department plans to update the Permission Form in the School Nursing: Technical Assistance Manual to alert parents of the possible need for a second labeled container from a pharmacy when filling prescriptions. A comment related to medications and dosages administered by the school nurse and the limitations of such is not being amended. This language was not amended from the original regulation.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 817 Medications and Treatments in order to include the addition of definitions, clarification of the process for the administration of medications and treatments, and also changes to reflect recent amendments to 24 **Del.C.**, Section 1921(a)(7) relating to who may assist students with medications and when they may do so.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 817 Medications and Treatments. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 817 Medications and Treatments attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 817 Medications and Treatments hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 817 Medications and Treatments amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 817 Medications and Treatments in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on **February 21, 2013**. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 21st day of February 2013.

Department of Education

Mark T. Murphy, Secretary of Education

Approved this 21st day of February 2013.

817 Administration of Medications and Treatments

1.0 Administration of Medications and Treatment

- 1.1 Medications, in their original container, and treatments may be administered to a public school student by the school nurse when a written request to administer the medication or treatment is on file from the parent, guardian or Relative Caregiver or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a). The school nurse shall check the student health records and history for contra indications and all allergies, especially to the medications, and shall provide immediate medical attention if an allergic reaction is observed or make a referral if symptoms or conditions persist. The school nurse shall also document the student's name, the name of medication and treatment administered, the date and time it was administered and the dosage if medication was administered.

10 DE Reg. 1807 (06/01/07)

2.0 Licensed Health Care Provider

- 2.1 Any prescribed medication administered to a student, in addition to the requirements in 1.0, shall be prescribed by a licensed health care provider. Treatment, including specialized health procedures, shall be signed by a licensed health care provider with directions relative to administration or supervision.

10 DE Reg. 1807 (06/01/07)

3.0 Prescription Medications

- 3.1 Prescription medication shall be properly labeled with the student's name; the licensed health care provider's name; the name of the medication; the dosage; how and when it is to be administered; the name and phone number of the pharmacy and the current date of the prescription. The medication shall be in a container which meets United States Pharmacopoeia National Formulary standards.
- 3.2 Medications and dosages administered by the school nurse shall be limited to those recommended by the Federal Drug Administration (FDA), peer review journal that indicates doses or guidelines that are both safe and effective or guidelines that are specified in regional or national guidelines.
- 3.2.1 The prescription and the medication shall be current and long term prescriptions shall be re-authorized at least once a year.
- 3.2.2 All medications classified as controlled substances shall be counted and reconciled each month by the school nurse and kept under double lock. Such medications should be transported to and from school by an adult.

10 DE Reg. 1807 (06/01/07)

4.0 Non Prescription Medications

- 4.1 Non-prescription medications may be given by the school nurse after the nurse assesses the complaint and the symptoms to determine if other interventions can be used before medication is administered and if all requirements in 1.0 have been met.

10 DE Reg. 1807 (06/01/07)

5.0 IEP Team

- 5.1 For a student who requires significant medical or nursing interventions, the Individual Education Program (IEP) team shall include the school nurse.

10 DE Reg. 1807 (06/01/07)

6.0 Assistance With Medications on Field Trips

- 6.1 Definitions

"Assist a Student with Medication" means assisting a student in the self administration of a medication, provided that the medication is in a properly labeled container as hereinafter provided. Assistance may include holding the medication container for the student, assisting with the opening of the container, and assisting the student in self administering the medication. Lay assistants shall not assist with injections. The one exception is with emergency medications where standard emergency procedures prevail in lifesaving circumstances.

"Field Trip" means any off campus, school sponsored activity.

"Medication" means a drug taken orally, by inhalation, or applied topically, and which is either prescribed for a student by a physician or is an over the counter drug which a parent, guardian or Relative Caregiver has authorized a student to use.

"Paraeducator" mean teaching assistants or aides.

6.2 Teachers, administrators and paraeducator employed by a student's local school district are authorized to assist a student with medication on a field trip subject to the following provisions:

6.2.1 Assistance with medication shall not be provided without the prior written request or consent of a parent, guardian or Relative Caregiver (or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a). Said written request or consent shall contain clear instructions including: the student's name; the name of the medication; the dose; the time of administration; and the method of administration. At least one copy of said written request or consent shall be in the possession of the person assisting a student with medication on a field trip.

6.2.2 The prescribed medication, in addition to the requirements in 1.0, shall be prescribed by a licensed health care provider. The medication shall be properly labeled with the student's name; the licensed health care provider's name; the name of the medication; the dosage; how and when it is to be administered; the name and phone number of the pharmacy and the current date of the prescription. The medication shall be in a container which meets United States Pharmacopoeia National Formulary standards.

6.2.3 A registered nurse employed by the school district in which the student is enrolled shall determine which teachers, administrators and paraeducators are qualified to safely assist a student with medication. In order to be qualified, each such person shall complete a Board of Nursing approved training course developed by the Delaware Department of Education, pursuant to 24 **Del.C.** §1921. Said nurse shall complete instructor training as designated by the Department of Education and shall submit a list of successful staff participants to the Department of Education. No person shall assist a student with medication without written acknowledgment that he/she has completed the course and that he/she understands the same, and will abide by the safe practices and procedures set forth therein.

6.2.4 Each school district shall maintain a record of all students receiving assistance with medication pursuant to this regulation. Said record shall contain the student's name, the name of the medication, the dose, the time of administration, the method of administration, and the name of the person assisting.

6.2.5 Except for a school nurse, no employee of a school district shall be compelled to assist a student with medication. Nothing contained herein shall be interpreted to otherwise relieve a school district of its obligation to staff schools with certified school nurses.

Nonregulatory note: 14 **DE Admin. Code** 612, *Possession, Use and Distribution of Drugs and Alcohol* addresses student self administration of a prescribed asthmatic quick relief inhaler and student self administration of prescribed autoinjectable epinephrine.

817 Medications and Treatments

1.0 Medication

1.1 Medication may be administered to a public school student by the school nurse when a written request to administer the medication or treatment is on file from the parent, guardian or Relative Caregiver or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a).

1.1.1 The school nurse shall check the student health records and history for contraindications and all allergies, especially to the medications, and shall provide immediate medical attention if an allergic reaction is observed or make a referral if symptoms or conditions persist.

1.1.2 The school nurse shall also document the student's name, the name of medication and treatment administered, the date and time it was administered and the dosage if medication was administered.

1.2 In addition to the requirements set forth in 2.1 below, in the case of a Prescription Medication, the requirements set forth below in 2.2.1 through 2.2.4 shall also apply.

1.2.1 Prescription medication shall be provided to the school in the original container and properly labeled with the student's name; the prescribing licensed health care provider's name; the name of the medication; the dosage; how and when it is to be administered; the name and phone number of the pharmacy and the current date of the prescription. The medication shall be in a container which meets United States Pharmacopoeia National Formulary standards.

1.2.2 Medications and dosages administered by the school nurse shall be limited to those recommended by the Federal Drug Administration (FDA), peer review journal that indicates doses or guidelines that are both safe and effective, or guidelines that are specified in regional or national guidelines.

- 1.2.3 The prescription and the medication shall be current and long term prescriptions shall be re authorized at least once a year.
- 1.2.4 All medications classified as controlled substances shall be counted and reconciled each month by the school nurse and kept under double lock. Such medications should be transported to and from school by an adult.
- 1.3 Non-prescription Medication must be in an original container with full label and may be given by the school nurse after the school nurse assesses the complaint and the symptoms to determine if other interventions can be used before medication is administered.

2.0 Definitions

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly states otherwise:

"Assist with Medication" means assisting a student in kindergarten through grade 12 in the self-administration of a medication taken orally, by inhalation, or applied topically, provided that the medication is in a properly labeled container. Assistance may include holding the medication container for the student, assisting with the opening of the container, and assisting the student in self-administering the medication. Assistance does not include making nursing judgments. Lay assistants shall not assist with injections. The one exception is with emergency medications where standard emergency procedures prevail in lifesaving circumstances.

"Controlled Medication" means those prescribed drugs regulated by Federal (CSA of 1970) and/or State Controlled (dangerous) Substances Act.

["Dosage" or "Dose" means a specific amount of medication prescribed or directed to be taken at any one time.]

"Educators" means teachers, administrators, and paraeducators employed by a school serving students in Pre-Kindergarten through Grade 12.

"Field Trip" means any off campus, school sponsored activity.

"Licensed Health Care Provider" means anyone lawfully authorized to prescribe medications and treatments.

"Medication" means a drug, which has been authorized for a student to use and includes both prescription and non-prescription drugs.

"Non-prescription Medication" means any over-the-counter medication that can be sold legally without a prescription.

"Other school employees" means coaches or persons hired or contracted by schools serving students in Kindergarten through Grade 12.

"Paraeducators" mean teaching assistants or aides.

"Prescription Medication" means a legal drug that has a written order for an individual student by a licensed health care provider licensed to prescribe medication.

"School Nurse" means a Registered Nurse licensed to practice in the State of Delaware, who is employed by a school district, charter school, or private school.

"Traditional School Day" means the hours within the days counted to meet the state minimum number of school days each year and summer school.

3.0 Treatments

Treatments, including specialized health procedures, shall be prescribed by a licensed health care provider with directions relative to administration or supervision.

4.0 IEP Team

For a student who requires significant medical or nursing interventions, the Individual Education Program (IEP) team shall include the school nurse.

5.0 Assistance With Self-Administration of Medications at Approved School Activities

- 5.1 Educators and other school employees are authorized by 24 Del.C. §1921(a)(17) to assist a student with self-administration of medication on a field trip or approved school activity outside of the traditional school day or off-campus are subject to the following provisions:

- 5.1.1 Assistance with medication shall not be provided without the prior written request or consent of a parent, guardian or Relative Caregiver, or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a). Said written request or consent shall contain clear instructions including: the student's name; the name of the medication; the dose; the time(s) and date(s) of administration; and the method of administration. At least one copy of said written request or consent shall be in the possession of the person assisting a student with medication on a field trip or approved school activity outside of the traditional school day or off-campus.
- 5.1.1.1 Medications shall be prescribed by a licensed health care provider and are ones that cannot be rescheduled for times when a person, who may legally administer medication, is available.
- 5.1.1.1.1 Doses may be provided for up to one week and shall be maintained in a secure location.
- 5.1.1.2 Prescription medications shall be provided to the school nurse and shall be properly labeled with the student's name; the licensed health care provider's name; the name of the medication; the dosage; how and when it is to be administered; the name and phone number of the pharmacy; and the current date of the prescription. The medication shall be in a container which meets United States Pharmacopoeia National Formulary standards.
- 5.1.1.2.1 Controlled medications must be stored on the person assisting or in a secure location under double lock. Maintaining **[multiple]** doses **[for greater than one day]** is not permitted except in the case of an overnight activity.
- 5.1.1.3 Non-prescription medications shall be provided to the school nurse by the parent in an original container along with a current, written directive from the student's licensed health care provider and shall include the student's name; the licensed health care provider's name; the name of the medication; the dosage; and how and when it is to be administered.
- 5.1.2 In order to be qualified to assist with medications, each such person shall complete a Board of Nursing approved training course developed by the Delaware Department of Education, pursuant to 24 Del.C. §1921(a)(17). Training shall be renewed minimally every five years. No person shall assist a student with medication without written acknowledgment that he/she has completed the course and that he/she understands the same, and will abide by the safe practices and procedures set forth therein. A school nurse employed by the public or private district or charter in which the student is enrolled shall:
- 5.1.2.1 Complete instructor training as designated by the Department of Education and shall submit a list of educators and other school employees, who have completed the training, to the Department of Education.
- 5.1.2.2 Provide the training for educators and other school employees.
- 5.1.2.3 Coordinate the collection and review of the written parental consent.
- 5.1.2.4 Provide the appropriately labeled medication, copy of the consent, and directions on assistance to the trained educator or other school employee.
- 5.1.3 Each school district shall maintain a record of all students receiving assistance with medication pursuant to this regulation. Said record shall contain the student's name; the name of the medication; the dose; the time of administration; the method of administration; and the name of the person assisting.
- 5.1.4 Except for a school nurse, no educator or other school employee shall be compelled to assist a student with medication. If a facility is otherwise required to have a school nurse, nothing contained here shall be interpreted to relieve the school of such obligation.

Nonregulatory note: 14 DE Admin. Code 612, *Possession, Use and Distribution of Drugs and Alcohol* addresses student self-administration of a prescribed asthmatic quick relief inhaler and student self-administration of prescribed autoinjectable epinephrine.

7 DE Reg. 68 (07/01/03)

10 DE Reg. 1802 (06/01/07)

16 DE Reg. 957 (03/01/13) (Final)