



NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Notice of Adoption of Amendments to Article 43 of the New York City Health Code

In accordance with §1043(b) of the New York City Charter (the “Charter”) and pursuant to the authority granted to the Board of Health (the “Board”) by §558 of the Charter, a notice of intention to amend Article 43 of the New York City Health Code (the “Health Code”) was published in the City Record on March 19, 2018, and a public hearing was held on April 18, 2018. Twenty-seven individuals testified at the joint hearing on this amendment and the companion amendment to Article 47, and 92 written comments were received, including seven from individuals who also testified. As discussed below, a number of changes were made, including several in response to the comments received. At its meeting on June 5, 2018, the Board adopted the following resolution.

Statement of Basis and Purpose

Statutory Authority

The Board’s authority to codify these proposed amendments is found in Sections, 556, 558, and 1043 of the New York City Charter (the “Charter”). Sections 558(b) and (c) of the Charter empower the Board to amend the Health Code and to include all matters to which the Department’s authority extends. Section 556 of the Charter provides the Department with jurisdiction to protect and promote the health of all persons in the City of New York. Section 1043 grants the Department rule-making authority.

Background

Article 43 of the New York City Health Code governs school-based programs for children aged three through five. The Board is amending Article 43 to add requirements for maintaining epinephrine auto-injectors on site and for certain teacher training. The basis for the changes is set forth below.

Emergency Medical Care and Epinephrine Auto-Injectors

The Centers for Disease Control and Prevention estimates that four to six percent of children nationally have a food allergy; such food allergies include ones that are life-threatening. Rapid administration of an epinephrine auto-injector following a life-threatening allergen exposure is critical to preventing significant negative outcomes, including death. Having epinephrine auto-injectors on the premises at all times can save the lives of children with life-threatening food allergies who do not bring an epinephrine auto-injector with them to the school-based program, and of children who have life-threatening food allergies identified for the first time while the child is there.

In 2016, the New York State Public Health Law was amended¹ to allow certain entities, including child care providers, to obtain non-patient specific epinephrine auto-injectors and to administer them in an emergency. This new State law creates the opportunity for such programs

¹ NYS Public Health §3000-C. Epinephrine Auto-injector devices. Effective March 28, 2017.

to have this critical, lifesaving program enrolling a child whose enrollment is paid for by federal child care subsidies.

The rule language is modified to include training regarding prevention of and response to emergencies related to food or allergic reaction, and prevention and control of infectious diseases (including immunization).

Other requirements

In order to come into alignment with federal requirements and state policy regarding the vulnerabilities and special needs of children who are homeless or in foster care and thus require accommodations for compliance with certain rules, the proposed language has been modified to provide for a reasonable grace period for certain provisions pertaining to providing medical records.

Tooth Brushing

The provisions regarding tooth brushing that were included in the original proposal are not included in these amendments. The Department has determined that further consideration is warranted.

The Department's authority to promulgate these proposed amendments is found in Sections 556, 558, and 1043 medication available. Accordingly, the amendments clarify requirements for emergency medical care and add a mandate that school-based programs maintain on site at least two unexpired epinephrine auto-injectors in each dosage appropriate for children who may be in the program, stored so they are easily accessible to staff and inaccessible to children. Whenever children are present, programs are required to have at least one staff person on site trained to recognize signs and symptoms of anaphylactic shock and to administer epinephrine as appropriate. The amendments also require programs to monitor the auto-injectors' expiration dates and call 911 after any administration, as required by the medication directions; to obtain parental consent at the time the child is enrolled in the program; and to have all staff trained in preventing and responding to emergencies related to food allergies.

The proposed language is modified to require that epinephrine auto-injectors have retractable needles and to clarify storage requirements.

Training requirements

The amendments expand teacher training requirements to enhance child safety and assure alignment with the health and safety training requirements in the federal Child Care Development Block Grant Act (CCDBG) Act of 2014. Sections 558(b) and (c) of the Charter empower the Board to amend the Health Code and to include all matters to which the Department's authority extends. Section 556 of the Charter provides the Department with jurisdiction to protect and promote the health of all persons in the City of New York. Section 1043 grants the Department rule-making authority.

Accordingly, the Board amends Health Code Article 43 as follows:

Note: New material is underlined. [Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably unless otherwise specified or unless the context clearly indicates otherwise.

RESOLVED, that Paragraph (7) of Subdivision (b) of Section 43.07 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, be amended, to be printed together with explanatory notes, to read as follows:

(7) *Staff training*: new employee orientation; training curricula; procedures for child supervision and discipline; child abuse and neglect recognition and reporting; provision of pediatric first aid and pediatric cardiopulmonary resuscitation, and other emergency medical assistance; emergency preparedness and response planning for emergencies resulting from natural disasters or a human-caused events, including procedures for evacuation, relocation, shelter-in-place and lockdown, staff and volunteer emergency preparedness training and practice drills, communication and reunification with families, continuity of operations, and accommodation of infants, toddlers, and children with disabilities or chronic medical conditions; prevention of and response to emergencies due to food and allergic reactions; prevention and control of infectious diseases (including immunization); reporting of child injury and illness; fire safety and fire drills; child and staff evacuation procedures; activity specific training for assigned activities; administration of medication, consistent with standards for parental consent; building and physical premises safety, including protection from hazards, bodies of water, and vehicular traffic; handling and storage of hazardous materials and appropriate disposal of biocontaminants; safe transportation of children if applicable; use of safe sleep practices and prevention of sudden infant death syndrome (“SIDS”); prevention of abusive head trauma (“shaken baby syndrome”) and child maltreatment; and process to document attendance at staff training.

NOTE: Paragraph amended by vote of Board of Health on June 5, 2018.

RESOLVED, that Paragraph (2) of Subdivision (a) of Section 43.17 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, be amended, to be printed together with explanatory notes, to read as follows:

(2) *Immunizations.*

[(C) A school that fails to maintain documentation showing that each child in attendance has either received each vaccination required by this subdivision or is exempt from such a requirement pursuant to paragraph A or B of this subdivision will be subject to fines for each child not meeting such requirements, as provided for under this Code.]

(C) In addition, for children who are either homeless, as defined by section 11434a of chapter 119 of title 42 of the United States code, or in foster care, there shall be a 90-day grace period to obtain the required immunizations after enrollment.

(D) A school that fails to maintain documentation showing that each child in attendance has either received each vaccination required by this subdivision, or is exempt from such a requirement pursuant to paragraph A or B of this subdivision or eligible for the grace period specified in paragraph C of this subdivision, will be subject to fines for each child not meeting such requirements, as provided for under this Code.

([D]E) All children shall have such additional immunizations as the Department may require.

NOTE: Paragraph amended by vote of Board of Health on June 5, 2018.

RESOLVED, that Subdivision (a) of Section 43.17 of the New York City Health Code be amended, to be printed together with explanatory notes, to read as follows:

(a) *Required examinations, screening and immunizations.*

(1) *Physical examinations and screening.* Prior to initial admission to a school, or within 90 days after admission for children who are either homeless, as defined by section 11434a of chapter 119 of title 42 of the United States code, or in foster care, all children shall receive a complete age appropriate medical examination, including but not limited to a history, physical examination, developmental assessment, nutritional evaluation, lead poisoning screening, and, if indicated, screening tests for dental health, tuberculosis, vision, and anemia.

(2) *Immunizations.*

(A) All children shall be immunized against diphtheria, tetanus, pertussis, poliomyelitis, measles, mumps, rubella, varicella, hepatitis B, pneumococcal disease and haemophilus influenzae type b (Hib), in accordance with New York Public Health Law § 2164, or successor law. Exemption from specific immunizations may be permitted if the immunization may be detrimental to the child's health or on religious grounds, in accordance with Public Health Law § 2164. In addition, there shall be a 90-day grace period after admission for children who are either homeless, as defined by section 11434a of chapter 119 of title 42 of the United States code, or in foster care, to obtain the required immunizations.

NOTE: Subdivision amended by vote of Board of Health on June 5, 2018.

RESOLVED that Section 43.21 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, be amended, to be printed together with explanatory notes, to read as follows:

§ 43.21 Health; emergencies.

(a) *Emergency procedures and notices.* Written policies and procedures for managing health and other emergencies shall be included in the written health and safety plan. Persons in charge of a school shall provide notice of the location and contact telephone numbers of the school to local hospitals, police precincts, fire houses and emergency transport services and information about emergency policies and procedures shall be provided to parents. Emergency procedures and emergency telephone contact numbers (for Police, Fire Department, Poison Control Center, Child Abuse Hotline, and the Department of Health and Mental Hygiene) shall be conspicuously posted in each classroom or area used by children.

(b) *Necessary emergency medical care.* When a child is injured, or becomes ill under such circumstances that [immediate] emergency care is needed, the person in charge of a school or designee shall obtain [necessary] such emergency medical care in accordance with the requirements of this section and immediately notify the child's parent or guardian.

(1) The person in charge of a school-based program or their designee must:

(A) At the time of the child's admission into the program, obtain written consent from a parent or guardian authorizing the program or other caregivers to obtain emergency medical care for the child; and

(B) Secure emergency medical care when needed, and notify a parent or guardian immediately; and

(C) Arrange for any needed transportation of any child in need of emergency health care and ensure that the supervision ratios required by §43.09 of this Article are maintained for the children remaining in the program; and

(D) Advise a parent or guardian, or the person authorized to pick up the child that day, of any developing symptoms of illness or minor injury sustained while the child is in the program.

(2) Where a parent has provided a written, individualized health care plan indicating the specific medications that can be administered and the schedule of such administration(s) for their child, including in cases of emergency, and there is a direct conflict between such plan and any provision of this section, the program shall follow the child's individualized health care plan.

(c) *Epinephrine auto-injectors.*

(1) Each person in charge of a school-based program shall maintain on site at the school-based program facility at least two epinephrine auto-injectors with retractable needles in each dosage appropriate for children who may be in the program, stored in an area inaccessible to children and maintained in an unexpired, operable condition such that

they are available for immediate use in case of need for emergency administration to a child.

- (2) Each person in charge of a school-based program shall designate a sufficient number of staff to be trained to administer an epinephrine auto-injector to a child in accordance with New York State Public Health Law §3000-c, or any successor statute or applicable regulation. At least one staff person trained to administer such epinephrine auto-injector shall be on-site in the school-based program at all times children are present. The epinephrine auto-injector training must include:
 - (A) How to recognize signs and symptoms of severe allergic reactions, including anaphylaxis;
 - (B) Recommended dosage for adults and children;
 - (C) Standards and procedures for the storage and use of an epinephrine auto-injector; and
 - (D) Emergency follow-up procedures.
- (3) Each person in charge of a school-based program shall designate at least one staff person to be responsible for the storage, maintenance, control, disposal, and general oversight of such epinephrine auto-injector to ensure such device remains available for use in an unexpired, operable condition, and that the storage location is in compliance with the requirements specified by the manufacturer.
- (4) Staff trained in accordance with the requirements of paragraph (2) of this subdivision may administer an epinephrine auto-injector to a child, whether or not there is a prior or known history of severe allergic reaction in such child.
- (5) Immediately following any emergency administration of an epinephrine auto-injector to a child, the person in charge of a school-based program or designee shall contact 911 for emergency medical care and notify the child's parent or guardian.
- (6) Within 24 hours following any emergency administration of an epinephrine auto-injector, the person in charge of a school-based program or designee shall contact the Department to report the incident.
- (7) Each epinephrine auto-injector shall be disposed of in accordance with applicable law.

([c]d) *First aid supplies.* A first aid kit, completely stocked for emergency treatment of cuts and burns, shall be provided by the person in charge of a school and shall be easily accessible for use. The first aid kit shall be kept out of reach of children and inspected periodically.

([d]e) *Incident [L]log [of children's illnesses, and accidents].* The school shall maintain an incident log of illnesses, accidents, epinephrine auto-injector administrations, and injuries sustained by children in the school, in a form provided or approved by the Department. The school shall provide a child's parent with information concerning such incident[s] pertaining to the child[,] on the date of such incident and shall report same [serious injuries] to the Department within 24 hours. Logged entries shall include the name and date of birth of the child, the place, date and time of the [accident or injury,] incident, names and positions of staff and other adults present, a brief statement [as to how] describing the incident, [accident, or injury

occurred,] emergency treatment obtained, if any, and parental notification made or attempted. The incident log shall be made available to the Department upon request.

NOTE: Section amended by vote of Board of Health on June 5, 2018.

RESOLVED that Section 43.25 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, be amended, to be printed together with explanatory notes, to read as follows:

§ 43.25 Modification of provisions.

When the strict application of any provision of this article presents practical difficulties, or unusual or unreasonable hardships, the Commissioner in a specific instance may modify the application of such provision consistent with the general purpose and intent of these articles and upon such conditions as in[his] the Commissioner's opinion are necessary to protect the health of the children. The denial by the Commissioner of a request for modification may be appealed to the Board in the manner provided by 24 RCNY §5.21.

NOTE: Section amended by vote of Board of Health on June 5, 2018.

RESOLVED that Article 43 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, be amended to add a new Section 43.27, to read as follows:

§ 43.27 Inspections.

School-based programs will allow credentialed Department staff to visit the programs while in operation and inspect the documents that are required by this Article to be kept on the premises and provided upon request. Such inspections will occur at least once per year.

NOTE: Section added by vote of Board of Health on June 5, 2018.