



New York City Department of Health and Mental Hygiene

Board of Health

Notice of Public Hearing and Opportunity to Comment on Proposed Amendments to Articles 43 of the New York City Health Code

What are we proposing? The Department of Health and Mental Hygiene (“the Department”) is proposing that the Board of Health (“the Board”) amend Article 43 (School-based Programs for Children Ages Three Through Five) of the New York City Health Code (“the Health Code”) to promote the health and safety of children attending school-based programs for children aged three through five.

When and where is the hearing? The Department will hold a public hearing on the proposed Health Code amendments at 10 a.m. on April 18, 2018. The hearing will be held at:

New York City Department of Health and Mental Hygiene
Gotham Center
42-09 28th Street, 3rd Floor, Room 3-32
Long Island City, NY 11101-4132

How do I comment on the proposed amendments to the Health Code? Anyone can comment on the proposed amendments by:

- **Website.** You can submit comments to the Department through the NYC Rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to resolutioncomments@health.nyc.gov
- **Mail.** You can mail written comments to:
New York City Department of Health and Mental Hygiene
Gotham Center, 42-09 28th Street, CN 31
Long Island City, NY 11101-4132
- **Fax.** You can fax written comments to New York City Department of Health and Mental Hygiene at 347-396-6087.
- **Speaking at the hearing.** Anyone who wants to comment on the proposed amendments at the public hearing must sign up to speak. You can sign up before the hearing by calling Svetlana Burdeynik at 347-396-6078. You can also sign up in the hearing room before or during the hearing on April 18, 2018. You can speak for up to five minutes.

Is there a deadline to submit written comments? Written comments must be received on or before 5:00 p.m. on April 18, 2018.

What if I need assistance to participate in the hearing? You must tell us if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 347-396-6078. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by April 4, 2018.

This is an accessible location.

Can I review the comments made on the proposed amendments? Comments made online on the proposed amendments can be reviewed at <http://rules.cityofnewyork.us/>. All written comments and a summary of the oral comments received by the Department will be made available to the public within a reasonable period of time by the Department's Office of the General Counsel.

What authorizes the Board to make these amendments? Sections 556, 558, and 1043 of the City Charter authorize the Board to make the proposed amendments. Portions of the proposed rule were not included in the Department's regulatory agenda for this Fiscal Year because they were not contemplated when the Department published the agenda.

Where can I find the Health Code and the Department's rules? The Health Code and the rules of the Department of Health and Mental Hygiene are in Title 24 of the Rules of the City of New York.

What laws govern the rulemaking process? The Board must meet the requirements of §1043 of the City Charter when creating or changing the Health Code. This notice is made according to the requirements of City Charter §1043.

Statement of Basis and Purpose

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

Tooth Brushing

The Department is proposing to mandate that school-based programs for children aged three through five assist children with brushing their teeth at least once each day. Tooth decay (caries) is the most common chronic childhood disease. Consequences of early childhood caries include a higher risk of developing additional caries in both primary and permanent teeth,¹ difficulty eating and speaking,² increased hospitalizations and emergency room visits³ and greater risk for delayed physical growth and development.⁴ National data show that nearly one in four preschool-age children has had caries.⁵ The Department's 2014 Child Dental Health Survey (CDHS) found that at least 15 percent⁶ of children in New York City child care programs

¹ Al-Shalan TA, Erickson PR, Hardie NA. Primary incisor decay before age 4 as a risk factor for future dental caries. *Pediatr Dent* 1997;19(1):37-41.

² American Academy on Pediatric Dentistry; Policy on early childhood caries (ECC): classifications, consequences, and preventive strategies. *Pediatr Dent*. 2008-2009;30 (7 Suppl):40-3.

³ Ladrillo TE, Hobdell MH, Caviness C. Increasing prevalence of emergency department visits for pediatric dental care 1997-2001. *J Am Dent Assoc* 2006;137(3):379-85.

⁴ Acs G, Lodolini G, Kaminsky S, Cisneros GJ. Effect of nursing caries on body weight in a pediatric population. *Pediatr Dent* 1992;14(5):302-5.

⁵ Dye BA, Thornton-Evans G, Li X, Iafolla TJ. Dental caries and sealant prevalence in children and adolescents in the United States, 2011–2012. NCHS data brief, no 191. Hyattsville, MD: National Center for Health Statistics. 2015.

⁶ This is likely underreported as it is self-reported information and children may have had undiagnosed caries (of which parents were unaware) when parents responded to the survey.

had experienced caries and 45 percent of children consumed between-meal sugary snacks or sugary drinks four or more times a day, a major risk factor for caries. Caries prevalence increases as children get older, with 42 percent of third grade children having experienced caries.⁷

Caries is a preventable disease. Relatively simple measures such as tooth brushing can significantly reduce risk. The American Dental Association recommends that tooth brushing twice per day begin at the eruption of a child's first tooth. Despite the established benefits of tooth brushing, the oral hygiene practices of young children in New York City remain inadequate. According to the CDHS⁸, among those surveyed, 40 percent of children aged 0 to 6 brushed their teeth only once a day or less frequently, and 45 percent of children aged 0 to 2 did not use fluoride toothpaste.

Requiring tooth brushing for school-based programs will promote tooth brushing and help prevent caries. CDHS findings indicate that children with at least one tooth who are enrolled in Early Learn centers—which are required under the federal Head Start program to have a daily tooth brushing routine—are two and a half times as likely to brush their teeth the recommended two or more times per day than children in other programs. Including tooth brushing requirements in Article 43 will set children up for a lifetime of good oral hygiene practices.

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 amended⁹ 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 to have this critical, lifesaving medication available. Accordingly, the Department is proposing to 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. Programs would be required to have at least one staff person on site, whenever children are present, trained to recognize signs and symptoms of anaphylactic shock and to administer epinephrine as appropriate. The proposal also requires the program to monitor the auto-injectors' expiration dates and call 911 after any administration, as required by the medication directions. Programs would be mandated to obtain parental consent at the time the child is enrolled in the program. All staff would be required to be trained in preventing and responding to emergencies related to food allergies.

⁷ New York State Department of Health Third Grade Survey.

⁸DOHMH's Oral Health Program conducted a survey to determine risk and protective behaviors for tooth decay among children in New York City group daycare centers. Over 1,800 parents and caregivers from 67 daycare centers reported risk and protective behaviors for tooth decay of their children and themselves.

⁹ NYS Public Health §3000-C. Epinephrine Auto-injector devices. Effective March 28, 2017.

Training requirements

The Department is proposing to 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, which apply to any program enrolling a child whose enrollment is paid for by federal child care subsidies.

The Department's authority to promulgate 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.

Accordingly, the Department is proposing that the Board amend 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; 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 tooth brushing hygiene and infection control; and process to document attendance at staff training.

NOTE: Paragraph amended by vote of Board of Health on [xxx], 2018.

RESOLVED, that Paragraph (2) of Subdivision (a) 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:

(2) *Immunizations.*

(C) In addition, for children in foster care and children experiencing homelessness, there shall be a 90-day grace period to obtain the required immunizations after enrollment.

([C]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 [xxx], 2018.

RESOLVED, that 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 include a new Subdivision (g), to be printed together with explanatory notes, to read as follows:

(g) *Daily tooth brushing.* At least once a day, school-based programs shall have staff assist each child aged two or older with brushing their teeth using a small amount of toothpaste containing fluoride.

(1) School-based programs shall maintain a tooth brushing log to document the date and time of tooth brushing as well as the name(s) of staff leading the activity. Such log shall be kept on site and made available to the Department upon request

(2) School-based programs shall have children brush their teeth while seated or standing around a table.

(3) School-based programs shall have children shall brush their teeth with a soft bristled, child-sized toothbrush and using fluoride toothpaste that has the American Dental Association seal of acceptance.

(4) School-based programs shall have staff dispense a separate small amount of toothpaste for each child onto a sheet of wax paper or a disposable plate, and shall scoop the amount dispensed for each child from the plate onto the child's toothbrush. Toothpaste shall not be dispensed directly onto any toothbrush.

(5) School-based programs shall have teaching staff or shelter child supervision staff demonstrate tooth brushing technique to all children. Programs shall have staff instruct children to brush the outside, inside, and chewing surfaces of all teeth. Programs shall have children brush the top teeth and then the bottom teeth.

(6) School-based programs shall have staff rinse each toothbrush individually under tap water or have each child rinse his or her toothbrush under tap water.

(7) School-based programs may refrain from implementing tooth brushing, or use toothpaste provided by the parent or guardian, for any child whose parent or guardian submits a signed written statement requesting that such child be exempted from the tooth brushing requirement or that a different toothpaste be used. Such statements shall be kept on site and made available to the Department upon request.

NOTE: Subdivision (g) added by vote of Board of Health on [XXX], 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 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.
- (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 [xxx], 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 [XXX], 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.

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Proposed Amendment of Article 43 of the New York City Health Code

REFERENCE NUMBER: DOHMH-91

RULEMAKING AGENCY: Department of Health and Mental Hygiene

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro
Mayor's Office of Operations

March 8, 2018
Date

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Proposed Amendment of Article 43 of the New York City Health Code

REFERENCE NUMBER: 2018 RG 021

RULEMAKING AGENCY: Department of Health and Mental Hygiene (DOHMH)

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: 3/8/2018