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New Mexico Department of Health

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State Records and Archives
Attn: Pamela Lujan y Vigil
Rules Management Analyst
Administrative Law Division
Commission of Public Records
1205 Camino Carlos Rey
Santa Fe, NM 87505

Regarding Emergency Rule Amendments to 7.30.12 NMAC (“Emergency Medications In Schools”), Sections 7, 8, 9, 10, and 11

Dear Ms. Lujan y Vigil:

The New Mexico Department of Health is filing amendments to 7.30.12 NMAC, Sections 7, 8, 9, 10, and 11 via emergency rulemaking. This emergency rulemaking is adopted to revise sections of the Emergency Medications in Schools rule, primarily to relax some of the restrictions in the rule regarding administration of epinephrine.

Epinephrine (also known as adrenaline) is a medication that is used as a first-line, life-saving treatment for a severe allergic reaction (anaphylaxis). Epinephrine acts to increase heart rate, improve blood pressure, and open airways. Anaphylaxis is a severe, rapid, and potentially fatal allergic reaction that affects the whole body, and usually occurs within minutes of exposure to a trigger, such as food or medication. Anaphylaxis can cause death within minutes without immediate epinephrine treatment, due to airway obstruction or a sudden drop in blood pressure.

The existing rule authorizes “trained personnel” to administer epinephrine in the schools. The rule defines “trained personnel” to mean:

a school employee, agent, or volunteer designated by the school nurse to administer epinephrine on a voluntary basis outside of the scope of employment and who has completed department approved epinephrine administration training that has been documented by the school nurse, school principal, or school leader.

7.30.12.7(R) NMAC (emphasis added). This definition is inconsistent with the definition of “trained personnel” in the Emergency Medications in Schools Act, which defines “trained personnel” to mean:

a school employee, agent or volunteer who has completed epinephrine administration training documented by the school nurse, school principal or school leader and approved by the department of health and who has been designated by the school principal or school leader to administer epinephrine on a voluntary basis outside of the scope of employment.

Section 22-33-2, NMSA 1978.

Thus, under the rule definition, only personnel designated by a school nurse can administer epinephrine; but under the statutory definition, those personnel are designated by a “school principal or school leader”. The school nurse requirement in 7.30.12.7(R) NMAC presents a significant threat to public health and safety, insofar as many schools in New Mexico do not have school nurses. By requiring that all people who administer epinephrine in schools be designated to do so by a school nurse, the rule definition effectively prohibits schools that do not have a nurse from administering epinephrine. Those schools that do not have a school nurse would have to rely on emergency medical services to respond to an anaphylactic event; but, as noted, anaphylaxis can result in death in just a few minutes.

The conflict between the statutory and regulatory definitions of “trained personnel” also presents a legal dilemma, insofar as the State Rules Act at Section 14-4-5.7(B), NMSA 1978 (which was revised approximately two years after the 2015 adoption of 7.30.12 NMAC) effectively prohibits words and phrases from being defined differently in rule than they are in statute. *Id.* (stating, “A word or phrase that is defined in an applicable statute should not be defined in rule. A conflict between a definition that appears in a rule and in an applicable statute is resolved in favor of the statute.”).

The emergency amendment to 7.30.12.7 NMAC resolves this issue, by replacing the rule definition of “trained personnel” with the statutory definition of that phrase.

The emergency amendments also revise 7.30.12.8 NMAC to specify that “schools” can decide to maintain and administer emergency medications, consistent with statute. *See, e.g.*, Section 22-33-4, NMSA 1978 (stating that “[e]ach local school board or governing body” may provide a stock supply of albuterol or epinephrine). This section is also revised to replace a reference to “school nurses” with “schools” generally, in recognition of the fact that the schools themselves maintain Class D Medication Room licenses. *See* 16.19.10.11 NMAC (authorizing “any school-based facility” to register for a Class D drug permit to stock emergency drugs). Later in this section, a passage is revised to authorize a “school leader” to keep records of grants, gifts, bequests, or donations, in recognition of the fact that not all schools have school nurses, and a school leader is able to accept these on behalf of the school.

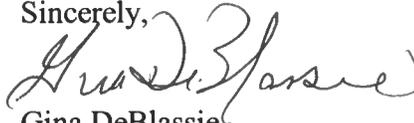
Section 7.30.12.9 NMAC is revised to specify that both schools and school districts can decide to maintain and administer emergency medications, consistent with the statute. *Id.* This section is also revised to replace two references to “PED licensed school nurses” with “school nurses” generally, in recognition of the fact that school nurses at private schools are not required to be licensed by the Public Education Department. *See* Section 22-10A-17, NMSA 1978 (requiring that “instructional support providers”, including school nurses, “obtain appropriate licensure” from the Public Education Department); Section 22-10A-2, NMSA 1978 (defining “instructional support provider” to mean “a person who is employed to support the instructional program of a *public school*”) (emphasis added).

Section 7.30.12.10 NMAC is amended to again replace references to “PED licensed school nurse” with “school nurse”. This section is also revised to specify that a school leader may, in addition to a school nurse, maintain logs of epinephrine usage and outcomes. Here again, this revision is made in consideration of the fact that not all schools have school nurses.

Finally, Section 7.30.12.11 NMAC is revised to specify that “schools” generally (rather than “school districts”) may access resources from the website for the NMDOH Office of School and Adolescent Health (OSAH). This section also updates the web address for OSAH.

In accordance with the State Rules Act at Section 14-4-5.6, NMSA 1978, the Department of Health amends 7.30.12 NMAC, Sections 7, 8, 9, 10, and 11, via emergency rulemaking. The Department finds that the time required to complete the procedures of the State Rules Act would cause an imminent peril to the public health, safety, and welfare, insofar as the time required to complete this rulemaking through ordinary processes would cause delay in the ability of schools to stock and administer epinephrine, a life-saving medication. These emergency amendments are temporary, and will expire in 180 days pursuant to Section 14-4-5.6(E), NMSA 1978, unless a permanent rule is adopted under the normal rulemaking process in that period.

Sincerely,

A handwritten signature in black ink, appearing to read "Gina DeBlasie", written in a cursive style.

Gina DeBlasie
Cabinet Secretary