

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

BOARD OF HEALTH

NOTICE OF ADOPTION OF AMENDMENTS
TO ARTICLE 47 OF THE NEW YORK CITY HEALTH CODE

In compliance with §1043(b) of the New York City Charter (the “Charter”) and pursuant to the authority granted to the Board of Health by §558 of said Charter, notice of intention to amend Article 47 (Child Care Services) of the New York City Health Code (the “Health Code”) was published in the City Record on March 27, 2009, and a public hearing was held April 28, 2009. Comments were received in support of the proposal, and no changes were made to the proposal. At its meeting on June 24, 2009, the Board of Health adopted the following resolution.

STATUTORY AUTHORITY

These amendments to the Health Code are promulgated pursuant to §§558 and 1043 of the Charter. Sections 558(b) and (c) of the Charter empower the Board of Health to amend the Health Code and to include in the Health Code all matters to which the Department’s authority extends. Section 1043 grants the Department rule-making authority.

STATEMENT OF BASIS AND PURPOSE

The Board of Health, at its meeting on March 6, 2008, adopted a resolution repealing and reenacting Article 47 of the New York City Health Code (Child Care Services). The Department of Health and Mental Hygiene (the “Department”) has requested that the Board amend various provisions of subdivision (e) and repeal subdivision (f) of §47.31 (Health: medication administration) of the Health Code to enable child care services permittees regulated under Article 47 to administer medications to children with disabilities.

After adoption of the resolution, the American Diabetes Association brought to the Department’s attention omission of a provision that would have made it possible for Article 47 permittees operating child care services to administer necessary medications, including injectible insulin, to diabetic children, where the Americans With Disabilities Act may require the child care service to administer such medication in order to reasonably accommodate the child’s attendance in the child care service.

Article 47’s current provisions allow health care professionals and certified non-professional staff to administer certain medications, and are based on nearly identical provisions in regulations of the New York State Office of Children and Family Services (OCFS). Through an oversight, however, Article 47 omits provisions that would enable New York City child care services providers to accommodate children with disabilities who may require medication to be administered by injection, vaginally or rectally.

Accordingly, the Board is amending Article 47. The amendment is essentially the same as the applicable OCFS regulation, 18 NYCRR §418-1.11 and is consistent with Guidance issued by OCFS regarding compliance with the Americans with Disabilities Act and OCFS regulations on the administration of medications in child care programs. Two favorable comments were received, including one from the American Diabetes Association. No changes have been made to the proposal.

Statement Pursuant to Charter § 1043

This proposal was not included in the Department's regulatory agenda because the need for the amendment became known after publication of the regulatory agenda.

The amendment is as follows:

Matter underlined is new

Matter to be deleted is indicated by [brackets]

RESOLVED, that §47.31 of Article 47 (Child Care Services) of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, adopted by resolution on the sixth of March, two thousand eight, be, and the same hereby is, amended, to be printed together with explanatory notes, to read as follows:

§47.31 Health; medication administration.

(a) *Medication policy required.* Each permittee shall establish a policy as to whether the permittee will or will not administer medication, and incorporate such policy in the service's health care plan[.] component of the written safety plan required by §47.11 of this Article. Notwithstanding any child care service's general policy not to administer medication, such policy shall indicate that the child care service may be required to administer medication to a child with a disability pursuant to the Americans with Disabilities Act.

* * *

(e) *Medication administration procedures.* Permittees and designated staff may administer prescription and nonprescription (over-the-counter) medications for eyes or ears, oral medications, topical ointments and medications, and inhaled medications in accordance with the provisions of this section.

* * *

(5) Permittees and designated staff may not administer medications by injection, vaginally or rectally, except [for] as follows:

(A) [epinephrine] Epinephrine auto-injector devices when necessary to prevent anaphylaxis for an individual child when the parent and the child's healthcare provider have indicated such treatment is appropriate; or

(B) For a child with special health care needs where the parent, child care service and the child's health care provider have agreed on a plan pursuant to which the permittee or designated staff may administer medications by injection, vaginally or rectally; or

(C) Where the permittee or designated staff hold a valid New York State license as a physician, physician's assistant, registered nurse, nurse practitioner, licensed practical nurse, or advanced emergency medical technician.

(6) [Medications shall not be administered vaginally or rectally except where such permittee or staff has a valid New York State license as a physician, physician's assistant, registered nurse, nurse practitioner, licensed practical nurse, or advanced emergency medical technician.] Nothing in this section shall be deemed to require any permittee to administer any medication, treatment, or other remedy except to the extent that such medication, treatment or remedy is required under the provisions of the Americans with Disabilities Act.

* * *

(13) A permittee may administer over-the-counter topical ointments, including sunscreen lotion and topically applied insect repellent, upon the written instructions of the parent. Such administration shall be consistent with any directions for use noted on the original container, including but not limited to precautions related to age and special health conditions, and no additional certifications to administer medications are required by the permittee or designated staff. If the only administration of medication offered by the service will be the administration of over-the-counter topical ointment, including sunscreen lotion and topically applied insect repellent, a designated health care consultant is not required. The permittee or designated staff shall record in the medication log applications of such topically applied ointments, sunscreen lotions and topically applied insect repellents, with the name of the child, date and time administered, and staff signature.

* * *

(18) Nothing in this section shall prevent a parent, guardian or other legally authorized individual in relation to a child from administering medication to a child while such child is in a child care service. In these circumstances, the permittee shall document the dosages and time that the medications were administered to the child by such individual. If the only administration of medication in such service is done by such individual, no certifications to administer medication are required by the permittee or staff.

RESOLVED, that subdivision (f) of §47.31 of Article 47 (Child Care Services) of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, adopted by resolution on the sixth of March, two thousand eight, be, and the same hereby is repealed.

Notes: Subdivision (a) and paragraphs (5), (6) and (13) of subdivision (e) of §47.31 were amended, a new paragraph (18) added to subdivision (e) and subdivision (f) was repealed by resolution of the Board of Health on June 24, 2009 to clarify that child care services may be required to administer medications to

children with special health needs in compliance with the Americans with Disabilities Act, and incorporating additional provisions of the regulations of the New York State Office of Children and Family Services with respect to medication administration. See, e.g., 18 NYCRR §418-1.11. A permittee who is required to administer medications under the provisions of the Americans with Disabilities Act is required to have staff certified in medication administration training (MAT), CPR and first aid in accordance with subdivision (d) of this section. Subdivision (f) (*When medication is not administered by the permittee*) was repealed, and non-duplicative provisions of this subdivision were incorporated in paragraph (13) and a new paragraph (18) of subdivision (e).