**Summary of Comments/Responses**

**Department of Education**

 **Maine Department of Education** **Chapter 40: Medication Administration in Maine Schools**

**Factual and Policy Basis**

This rule provides directions to public and private schools approved pursuant to 20-A MRSA §2902 in the administration of medication within schools. The proposed amendments: (1) authorize any student who attends public school to possess and use topical sunscreen products while on school property or at a school-sponsored event without a note or prescription from a health care provider if the product is regulated by the federal Food and Drug Administration for over-the-counter use for the purpose of limiting skin damage from ultraviolet radiation as required by P.L. 2019, Ch. 32, (2) make refinements to the rule related to medications related to the care of insulin dependent diabetes in accordance with standard practice; (3) add regulatory requirements for medication on school field trips that had previously been in Department guidance.

**Comments and Responses**

A public hearing on the proposed amendment Chapter 40 was held on October 28, 2019. At the hearing, no individuals commented on the proposed regulation.

The deadline for submission of written comments was November 22, 2019. Eleven sets of written comments were submitted by that date. Comments were received from the following:

1. Jeannie Ross, Winthrop Schools

2.Rachel Heath RN, School Nurse at Jefferson Village School AOS93

3. Lindsay Turner, RN, MSM, MSAD 53

4. Shay Stathoplos, BSN, RN,NCSN, Horace Mitchell Primary School, Kittery Point

5. Carol Warmuth, RN, Brewer Community School

6. Janis Hogan, BUS,RN,NCSN

7. Lisa Storer RN,BSN, BMWMS, Poland Regional High School

8. Kathi Shorey, Sweden, Maine

9. Virginia Delorimier, Assistant Executive Director, Maine State Board of Nursing

10. Geraldine Betts, Administrator, Maine Office of Professional and Occupational Regulation

11. Hilary Schneider, MPP, American Cancer Society Cancer Action Network (ACS CAN)

**General**

1. **Comment (#8, #11):** Commenters indicate they support the overall intent of the proposed revisions to Rule Chapter 40.

**Response:** *No change made as a result of this comment.*

**Section 1. Definitions**

1. **Comment (#2):** Commenter wants to clarify by topical OTC sunscreen, that means a lotion or roll on vs. aerosol correct? Meaning Aerosol is NOT considered topical? Or is it?

**Response:** Aerosol is considered topical. While the comment raises a question in the definition section, Section 2 Administering Medications in Schools will be changed. In Section 2 C (vi) a new #8 has been added which states “It is recommended that aerosol or spray sunscreen not be used in schools because it could adversely affect students with asthma and/or allergies.”

**Section 2. Administering Medications in a School Setting**

1. **Comment (#1):** Commenter indicates that she is a NP/ RN school nurse in Winthrop MS and HS. I do not agree with needing a parent/guardian to need to send in written permission for a student to have sunscreen at school. It will limit student use of a very much needed staple item for kids to start using at a young age to prevent skin cancers. It is difficult for kids to get into the habit of using sunscreen as it is and we should encourage and promote use without adding unnecessary barriers.

**Response: *Revision made:***  In Section 2 C(vi) (2) the requirement for written permission stays in the rule with the phrase added ‘as required by Section 2 C(ii)(10”.

1. **Comment (#3):** Commenter is wondering if the language around permission slips for over the counter medication can be changed so that schools can use these permission slips for the duration of the child's time at a given school. For example, a 5th grader entering our middle school could have a permission slip for Tylenol, Ibuprofen, & Benedryl  that would be good from 5-8 grade if the language allowed the school to do so. Each year, the school nurse spends soooooo much time chasing paperwork related to these permissions. Currently we also need to have the school district physician sign a renewal of the over the counter orders every year, which I think is absolutely necessary, however if nothing has changed for the student, than having their parents fill out the paperwork year after year seems redundant and not value-added activity for the school's health office resources.

Current language states: Written parental permission forms and physician orders must be renewed at least annually. Physician orders must be renewed if there are changes in the order.

So section C; ii; 3 **could perhaps read**: "Written physician orders must be renewed at least annually and the school must have a valid permission slip on file from the parent/guardian in order to administer the medication."

This may provide each school with the ability to keep up to date permissions by school for their time in elementary or middle school and would save parents and healthcare workers time when 80% of our students parents fill them out year after year and say the same thing. Parents have expressed dissatisfaction with having to fill this stuff out each year when nothing has changed and we spend incredible amounts of time chasing this paperwork annually.”

**Response:** This comment is beyond the scope of the proposed changes. There is no change made in response to this comment, but we will make note to consider this comment in future revisions to the Chapter.*No change made as a result of this comment.*

1. **Comment (#4):** Commenter raised the following concerns:
2. How we will be sure that it is FDA approved?
3. 2. What are we to do if there is no written note from the parent? Is it supposed to be with the sunscreen or are nurses expected to track all that?
4. 3. I am not sure that all sunscreen has the side effects written on the label?

**Response:** a) As described in Section 2 C (vi)(4) wording has been amended to put “FDA” between proper and labeling. School nurse or other school personnel may inspect the sunscreen for labeling. b) See Response to Comment #1 above. c) Sunscreen that is regulated by the FDA does not have a list of side effects, but is required to have a warning label.

***Revision made: c)*** In the sentence “Sunscreen is to be in its original container, labeled with directions of use”: ‘side effects’ has been deleted and replaced with ‘warnings.’

1. **Comment (#5):** Commenter has “some concerns about needing an IHP for a diagnosis of asthma. Commenter has 90 kiddos that parents currently identify as asthmatic.  Not all of them have/ use inhalers, of course, and right now I have none who use a rescue inhaler daily. No one uses the Maine Asthma Plan any more, it seems, which is unfortunate. What is your recommendation for how to weed this out.

**Response:** Commenter emailed the Department on November 5 indicating the as a result of reviewing the language again, the commenter had misinterpreted the language and is fine with the language as proposed. *No change made as a result of this original comment.*

1. **Comment (#7):** Commenter is “wondering if the proposed new policy for medication administration in schools is eliminating the Asthma action plans.”

Commenter is “wondering if the individual health plan and emergency plans for anaphylaxis, asthma, and diabetes plans would have a template that would include the parent , health care provider and school nurse to sign off on when the student demonstrates being responsible to carry/use inhaler, epi, or insulin.” This is the commenter’s “first year as a school nurse and she is trying to come up with a process for best practice for our students and to follow this policy.

**Response:** Asthma action plans are required as stated in Section 2 C (v)(1)(b). There are sample plans available for all listed diagnoses on the Department of Education website. *No change made as a result of this comment.*

1. **Comment (#7):** Commenter supports the proposed change to the rule to permit students to carry and apply sunscreen.

**Response:** *No change made as a result of this comment.*

1. **Comment (#9):** Commenter indicates “This section refers to an Individualized Health Plan and Emergency Plan for epinephrine autoinjectors, asthma treatment and management, and diabetes requiring treatment and management at schools.  The new proposed language and previous language do not indicate any age parameters for possession and administration of emergency medications which would lead one to believe that if the provider submitted written approval and the parent provided written approval, then the school nurse could be evaluating students from kindergarten to high school. I would suggest there be some age parameter language be added as part of the Individualized Health Plan to ensure student maturity is one of the determinant factors in allowing the student to carry and administer emergency situations.”

**Response:** No common national standard age exists for self-carrying these medications. It is based on the maturity and understanding of the individual. ***Revision made***: Section 2.C.v.(3) the following sentence has been added “The school nurse should consider the ability of the student to understand their diagnosis, appreciate the importance of taking their medication at the right time and in the right amount, and accept the responsibility that comes with self carry medications.”

1. **Comment (#9):** Commenter indicates “Number five indicates there is no expectation of the school staff to apply sunscreen to students. Number six states there is no expectation that the school will apply sunscreen to all students. These statements appear to contradict each other. I am not sure what the difference is between school staff and the school.  Number seven indicates that a student can direct unlicensed assisted personnel to apply sunscreen if the student is not physically able to do so themselves. Only registered nurses can coordinate and oversee the tasks of unlicensed assistive personnel in providing health care tasks. If the nursing staff is not expected to apply sunscreen to students, this again contradicts previous statements. If there are certain situations where school staff may need to assist a student in applying sunscreen because of physical restrictions, then that is what should be stated.”

**Response:** Statements #5 and #6 are different. The first states supply, the other is apply. Number 7 the phrase “unlicensed assistive personnel” has been changed to “school personnel”.

1. **Comment (#11):** Commenter suggests “Under Section 2, C. vi. a., we suggest changing the word “side effects” to “warnings.” Over-the counter drug fact labels for products regulated by the FDA are required to include a specific warnings section. This section is required to include when the product should not be used

under any circumstances, and when it is appropriate to consult with a doctor or

pharmacist. This section also describes side effects that could occur and

substances or activities to . avoid. Since the common language describing this

section is “warnings” and not “side effects,” we recommend the language in the

rule be consistent with the language used in FDA’s labeling

requirements.”

**Response:** Confirmed that the warning language is used by the FDA. Will change the wording.

***Revision made*:** In the sentence **“**Sunscreen is to be in its original container, labeled with directions of use” the phrase ‘and warnings’ has been added. Also see Response to Comment 3 C above.

1. **Comment (#11):** Commenter “recommend either removing or amending Section 2, C. vi. 3. This provision seems to be an unreasonable barrier to students possessing and using sunscreen while on school property or at a school-sponsored event unless the superintendent’s designee is defined broadly. This also seems like it could pose an undue burden on the school nurse. Many students do not regularly see the school nurse. Requiring a student to inform the school nurse or superintendent’s designee that he/she is in possession of sunscreen seems to be an unreasonable barrier if all of the other parts of this section are met (e.g., written permission, product in its original container with appropriate label). Rewording “superintendent’s designee” to school personnel may be more appropriate and reasonable.”

**Response:** See Comment and Response to #1 above.

**Section 3. Required Training of Unlicensed School Personnel to Administer Medication**

**Section 4. Procedures for Medication Administration on School Field Trips/Off-Campus Events**

1. **Comment (#6):** Commenter appreciates the section on training and overnight field trips.

**Response:** *No change made as a result of this comment*.

1. **Comment (#9):** Commenter indicates for 4.C. “**. Procedure for Medication Administration on School Field Trips/Off-Campus Events**.

The description of this section appears to be dispensing. The Board of Nursing has always followed the definition of dispensing as defined by the Board of Licensure in Pharmacy. Registered nurses and licensed practical nurses have not been allowed to dispense medications because it has been considered the practice of pharmacy. I had suggested to Emily Poland that if the Board of Pharmacy has approved the practice as stated in this section than it would probably be important to state that.

**Response:** The language represented the historical view of what was permissible. ***Revision made:*** The original proposed language has been deleted and the following has been added: ***“*C. Packaging.** Duplicate medication containers should be obtained from the pharmacy to be used for field trips as this is considered best practice.”

1. **Comment (#9):** Commenter indicates 4.E. “**. E. Special Considerations, a. Out of State Field Trips.** Commenter would remove the statement that the school nurse “research the destination state nurse practice laws as well as medication administration laws or rules for schools” and replace with “contact the Board of Nursing in the state of the school trip regarding questions about unlicensed school personnel administering medications.”

**Response:** Change made according to commenters suggestion.

1. **Comment (#9):** Commenter indicates for 4.E.c. “**Medical Marijuana** This section states that reasonable accommodations must be made for students who hold written certification for medical marijuana under Title 22, section2423-B**.** Are there any guidelines as to what reasonable accommodations are? It seems this stand alone statement could be left to interpretation resulting in inconsistencies between school units.

**Response:** Reasonable accommodations is the language used in Title 20-A §6306 and is frequently used in issues related to disabilities. The citation “As stated in 20-A §6306” has been added before “reasonable”.

1. **Comment (#10):** Commenter suggests “You may wish to consider a best practice and probably safest approach by considering obtaining a duplicate vial from the pharmacy and keep the medication in its original and properly labeled medication vial as opposed to a separate envelope or container labeled by someone other than the pharmacist, which could be risky. This is up to the school, however, this is a suggestion only and suggested for best practice consideration only.”

**Response:** See the Response to Comment #3 above.

**Section 5 Reporting**