

Emergency Medication Waiver Request Questions and Answers

1. **Question:**

Why did the Division create a waiver for emergency medications?

Answer:

Providers have always been subject to the Americans with Disabilities Act (ADA). Day care regulations include this requirement. The Division of Child Care Services examined the serious consequences faced by children who require an auto injector or inhaler and those caregivers who could not immediately administer the life-saving medications, but are required by ADA to admit children into care without delay. The waiver is an interim solution to this dilemma. The Division of Child Care Services is examining changes to its regulations concerning this issue.

2. **Question:**

Does a program that is not currently administering medications need to amend its non-medication health care plan to address the issue of handling, storage and disposal of these medications?

Answer:

No, this is not required. The regulations require that providers properly store, handle and dispose of medications, so those issues are covered. The provider can simply attach the waiver to the current health care plan.

3. **Question:**

Providers who are already authorized to administer medications to children are confused and think they need to complete this waiver.

Answer:

Providers who are already authorized to administer medications may administer emergency medications without this waiver.

4. **Question:**

How does this affect the enrolled legally exempt providers who also have to follow MAT requirements in order to give meds to non-relatives? Can they participate in this waiver process?

Answer:

This issue is being examined and will be updated soon.

5. **Question:**

I was at a SACC program and the director handed me four waivers. The director stated that she was happy the waivers came about because she can now enroll children who have an Epi-Pen and inhaler. Here are my questions:

- a. Can a waiver be approved before a program has an enrolled child and all the necessary terms that are listed in the waiver e.g. Individual Health Care Plan, standing order for the prescription, parent approval in writing instruction by the parent on how to use?
- b. Will this Waiver be granted to all that seek it? In the pamphlet provided to the program, there is no language that suggests that this waiver will not be approved. They just fill out the form and the waiver will be approved.

Answer:

First, let's address the statement made by the director about enrolling children with emergency medication needs. This program and all day care programs have always been subject to the Americans with Disabilities Act (ADA). It seems this SACC program made a blanket policy not to enroll children who need medication. This practice is unlawful. The basic requirement of the ADA is that places of public accommodation may not discriminate against children with disabilities (and some children with disabilities require medication) unless the presence of such children would: (1) pose a direct threat to the health or safety of others; or (2) require a fundamental alteration in the nature of the program. Programs that are subject to the ADA must make reasonable accommodations to enable children with disabilities to participate in the program. All regulated day care programs, including those operated out of a family home or residence, fall within the ADA's definition of a public accommodation except for day care programs operated by religious entities.

Answers to a. and b. follow:

- a. A waiver can be approved before a child needing these medications is enrolled. The provider or caregiver would, however, need to take the CPR course within the 60 days of the approval date and keep the certification current. The other documents, such as the health care provider's script and directions would have to wait until a child is enrolled requiring the emergency medication. The waiver is generic, and while its major tenets must remain in place, the waiver can be adapted for this purpose.
- b. The waiver is actually a waiver request. All waiver requests must be reviewed by the regional office manager. There may be valid reasons the manager may not wish to approve the waiver. Disapproval, however, must be based on a program concern and not a manager's disagreement with the concept of the waiver itself.
A brief statement documenting why an emergency medication waiver was denied should be shared with Bill Dorr in Home Office.

6. Question:

Can centers/programs that already have MAT trained staff, apply for the waiver for the hours in which MAT-trained staff are not available for the emergency medications only?

Answer:

While this was not the original intent of the waiver request, it is an appropriate use for the waiver.

7. **Question:** Can you add to the waiver that, while health care consultants are not required, they can offer training?

Answer:

Janice Molnar sent a representative to meet with the CCR&R health care consultants and MAT trainers. In a follow-up memo to that group, she shared the following message:

"I understand that you would like the Division to change the fact sheet on its website to include a message that encourages providers to contact CCR&R health care consultants for technical advice on the use of auto injectors and inhalers. In addition, you would like the fact sheet to encourage providers to take MAT training even if the waiver does not require it. I approved these changes to the fact sheet and asked Kathleen to change the information on the website.

I have also been advised that MAT trainers would like to provide formal training on the use of the auto injector, inhaler and nebulizer. Since these are topics covered in the MAT training, I see no problem with MAT trainers providing training on these topics using the MAT curriculum as a guide. My staff will be meeting with PDP soon to discuss this option."

8. **Question:**

It is recommended that the provider take a course concerning the auto injector and inhaler. Will the Office make that mandatory as part of the waiver?

Answer:

Training will remain a recommendation for purposes of the waiver. The Division is, however, in the process of reviewing formal regulatory changes and will, of course, take these comments into consideration.

9. **Question:**

According to the waiver, a caretaker certified in CPR must be present at the day care program during all hours the child with the potential emergency condition is in care." Does this mean that a family day provider would not have the 60-day window to obtain CPR certification since she/he would be the only caretaker present?

Answer:

The family day care provider does have 60 days to become CPR trained. This situation is no different than a GFDC provider and her/his assistant when neither is certified in CPR.

10. **Question:**

If the waiver could apply to programs currently approved to administer medications, would all the waiver conditions still need to be met, including someone certified in CPR being present at all times, the administrant required to get CPR training within 60 days of using the EpiPen (if she didn't already have it), and a call to 911 immediately following use of the EpiPen?

Answer: Yes, under certain circumstances, the waiver could apply to a program authorized to administer medications. One example would be a day care center that enrolls a child with an emergency condition and places the child in a classroom where there is no medication

administrant. The program could request a waiver for the staff working in that classroom to administer the auto injector pen or the inhaler/nebulizer. And, yes, the terms of the waiver must be met under these circumstances as well. To be clear, programs that are authorized to administer medications generally, and for children with auto injectors and asthma, are already required to have their medication administrants who are CPR certified and the program must have coverage for those children at all times.

11. **Question:**

If a program is MAT approved, would a staff who is not MAT approved be able give an EpiPen, (if the program has a waiver)? Example, a SACC room in a DCC goes on a field trip, the staff person in that room is not MAT approved, but the program would like her to be able to administer the EpiPen, should she need to, otherwise the program would need to send the staff person who is MAT approved on the field trip?

Answer:

Yes, **but** the program must be in compliance with all the terms of the waiver. In your scenario, the person who is not MAT trained and will be administering the EpiPen would have had to be instructed on its use by the parent or the child's health care provider before being able to administer the EpiPen. **Staff may not train staff on its use.** The person on the field trip must be familiar with the conditions of the waiver—such as the requirement to call 911- and would have to be certified in CPR or take along a person who is certified in CPR.

12. **Question:**

Is a waiver required for each staff person who will administer the medication or does one waiver cover the program?

Answer:

The waiver is not child specific, one waiver will cover the program but each staff person administering the medication must be in compliance with all the parts of the waiver.

13. **Question:**

Why isn't there a limitation on the waiver with a submitted plan and time table to get staff MAT trained and the program certified to administer medications?

Answer: The Division has heard from many providers who do not wish to be MAT certified to administer all medications, but do want to make sure they are in compliance with ADA requirements. The Division is looking into a shortened MAT training which would address emergency medications only. In the meantime, the Division recognized the reluctance or refusal by some providers to admit children with medical needs and the threat to children already enrolled in care who faced long delays before their providers could administer life-saving medications.

14. **Question:**

Why is the Division only requiring CPR? First Aid training is where you learn about anaphylactic shock and asthma emergencies. For Example, the American Red Cross offers three- hour training just for allergy and asthma emergencies, which I believe should be a minimum requirement for the programs to receive the waiver.

Answer:

The Division chose CPR as a requirement because both of the emergency conditions addressed by the waiver can result in breathing difficulties. The rationale is that, once the emergency medication was administered, if the child stopped breathing, the provider could use CPR until professional help arrived.

The Division researched the community courses available to providers on these two conditions, and decided to recommend that the provider take the first aid training or a course that specifically covers the medications in the waiver (also available through Red Cross and from MAT trainers) rather than require the course. The Division will approve these training classes toward the 30-hour training requirement as an incentive.

15. **Question:**

How will providers keep medication inaccessible? How will they document administration of medications? Which CPR training is required?

Answer:

Providers will keep medications inaccessible in the same manner that they keep other harmful products inaccessible. The regulation covering this requirement was not waived. Documentation of the administration of medication is also required by regulation and not waived in the waiver request. CPR training must be appropriate to the age of the child with the condition. Many programs now offer a CPR course that covers all children under the age of 12.

16. **Question:**

What documentation is expected to be on file for programs/providers with approved waivers, e.g. Log of Administration, Verification training was received for the administration of medication, medication errors, etc?

Answer:

The waiver request does not waive the requirements that providers document the administration of these medications nor does it waive their responsibility to report errors. All documentation currently required in the regulations remains mandatory.

17. **Question:**

Since a year is the usual length of the CPR certification, will the waiver only be approved for a year and 2 months, to help ensure that someone in the program is CPR trained?

Answer:

Waivers can be approved for as long as a licensing period is in effect. This waiver is no different than any other in that regard.

18. **Question:**

Will there be swift enforcement if the program does not meet the conditions of the waiver as it is a health and safety risk to children? If there will be, shouldn't it be included in the provider information or on the waiver?

Answer:

If a program does not meet the conditions of the waiver, the waiver can be rescinded. Once approved and signed, the waiver is as compulsory as any regulatory requirement; the regional office can refer noncompliant programs for enforcement. The Division's revised medication regulations have only been in existence since 2005 (4 years). Before these regulations were implemented, child care providers administered medications on a regular basis. If the Regional Office is seeking enforcement based on health and safety risk, the licenser will need to identify what the risk or resulting harm is in the particular case. Home Office and Counsel's Office will examine all referrals.

19. **Question:**

I am assigned as licenser to a provider who has several SACC programs and all programs are approved to administer medication. She wants to know if she can also have the waiver for the times when she may have staff turnover and the Medication Administrator is the person who leaves the program. She also asked if the waiver included **Benadryl** because most scripts include Benadryl.

Answer:

As stated above, a waiver request can be approved for programs that are MAT trained. All stipulations in the waiver request must be satisfied whether the program is authorized to administer medications or not. The waiver request covers the Auto injector, inhalers and nebulizers **only**. **Benadryl is not covered**. In order to administer Benadryl, the program must be authorized to administer all medications. As a result, the director must staff accordingly.

20. **Question:**

Can the physician's consent/standing order exceed the 6-month time period required in regulation? Is there a time limit for the standing order?

Answer:

The waiver request does not waive this particular citation in regulation (6 months is still in regulation). However, the Division is reviewing this time period for changes along with other possible regulatory changes.

21. **Question:**

RE: an "inhaler" - does this waiver only cover a "rescue inhaler" or does it also cover ongoing and preventative administration of medication via an inhaler?

Answer:

The waiver covers both the rescue inhaler and the typical inhaler which prevents episodes of asthma.

22. **Question:**

Does the waiver apply to all age groups - even infants?

Answer:

Yes, the waiver request covers all age groups. Nebulizers are used for very young children with asthma.

23. **Question:**

How will the licensor keep track of the CPR certifications in the program, i.e. when the staff that is CPR certified leaves and the program does not notify the Office or doesn't get the certification at all?

Answer:

Licensors are expected to perform a document check as part of his/her regular inspection duties. If a particular program has had past problems with compliance with regulations, waivers or training requirements, the regional office manager may choose to deny the waiver request or to stipulate as part of the waiver that copies of CPR training certificates be forwarded to the Division. Additional oversight may be needed for this program.

24. **Question:**

Will a waiver be permitted for a "Twinjet" auto-injector device?

Answer:

No, because the Twinject® contains both an auto injector and a conventional needle containing a dose of epinephrine. The auto injection is covered in the waiver, not the conventional needle. If the health care provider is prescribing both, the program would have to be authorized to administer medications and have an individual health care plan including the use of the conventional needle for this child.

25. **Question:**

Can a school-age child who needs emergency medications (EpiPen, rescue inhaler), be permitted to play outside without direct supervision with parent's written permission?

Answer:

This is an area outside the administration of the medication itself. The waiver does not change current child-specific planning on issues such as this. The Division would recommend that the provider, health care provider and parent make recommendations specific to the child in question.

26. **Question:**

How many people need CPR in a Day Care Center if all staff are included in the waiver? It states the "provider" must be, is that the director in a DCC or do all staff need CPR?

Answer:

If all staff in a program are named as persons who will be administering the auto injector, then all those staff must meet the waiver conditions. The waiver does not stipulate that the person administering the auto injector must be the same individual who is trained in CPR. However, the program must have staff on-site at all times who is trained in CPR so that the children with the condition are in close proximity to the trained staff in case they need immediate attention.