

Legal Update: Amendments to the Public School Code

Diabetes Management

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On July 13, 2016, Governor Wolf signed into law House Bill 1606, now known as Act 86 of 2016 ("Act 86"). Included among the numerous amendments to the Public School Code, Act 86 establishes new requirements for LEAs related to diabetes care and management for students. More specifically, the Act adds, Sections 1414.3, 1414.4, and 1414.5 to Article XIV of the School Code (School Health Services).

Section 1414.3 requires that the Pennsylvania Departments of Health and Education provide an educational program for the instruction of school employees in diabetes care and treatment. The educational program is to include instruction addressing LEA requirements under the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act (Section 504) and the State Board of Education regulations as applicable to students with diabetes, including:

- (1) An overview of all types of diabetes;
- (2) Means of monitoring blood glucose;
- (3) Symptoms and treatment for blood glucose levels outside of target ranges, and symptoms and treatment for hypoglycemia, hyperglycemia, and emergency situations; and
- (4) Techniques for administering glucagon and insulin.

All diabetes-related care provided to a student is required to be consistent with the LEAs approved school health program and the individual service agreement for each student. The Act provides that LEAs may identify in each school building at least one individual, who is not a school nurse and who is not required to be a licensed healthcare practitioner, to complete the educational program outlined above or an equivalent program offered by a licensed healthcare practitioner with expertise in the care and treatment of individuals with diabetes. Any such school personnel, trained in accordance with the requirements of the Act and agreeing to serve in such capacity, may be identified by the LEA as an employee "responsible for a child with diabetes." Such individual(s) may be designated by the LEA in a student's Section 504 Service Agreement or IEP to administer diabetes medications, use monitoring equipment and provide "diabetes care."

In addition, Act 86 addresses transportation provided by LEAs to students with diabetes and specifically provides that a service agreement may require an LEA to ensure that the driver of any school vehicle transporting a student

with diabetes is provided with the following information:

(1) Identity of the student with diabetes;

(2) Potential emergencies that may occur as a result of the student's condition and appropriate responses; and

(3) The telephone number of the appropriate contact in case of an emergency

Under Act 86, individuals who are not licensed healthcare practitioners may only administer diabetes medications via injection or infusion after receiving annual education from a licensed healthcare practitioner, and with written authorization from both the student's healthcare provider and parent/guardian.

Newly added Section 1414.5 addresses the possession and use of diabetes medication and monitoring equipment by students in school. Prior to permitting any student to self-administer diabetes medication or utilize monitoring equipment in school, the LEA must have the following documentation on file:

(1) Written statement from the student's healthcare provider that lists the diagnosis, the name of the prescribed medication, the dose, the time when the medication is to be taken or monitoring equipment is to be used, the specified period for which the medication or monitoring equipment is authorized to be used, and the potential of any serious reaction that may occur and any necessary emergency response;

(2) Statement from the student's healthcare provider indicating whether the student is competent to self-administer the medication and/or utilize the monitoring equipment and whether the student is able to practice proper safety precautions for the handling and disposal of the medication and monitoring equipment;

(3) Written request from the student's parent/guardian that the LEA is authorized to comply with the instructions of the student's healthcare provider. Such written request must include a statement relieving the LEA and any of its employees of any responsibility for the prescribed medication or monitoring equipment and specifically acknowledging that the LEA bears no responsibility for ensuring that the medication is taken or monitoring equipment used;

(4) Written acknowledgement from the school nurse that the student has demonstrated the capability to self-administer diabetes medication and use monitoring equipment;

(5) Written acknowledgement from the student that the student has received instruction from a licensed healthcare practitioner on proper safety precautions for the handling and disposal of diabetes medication and monitoring equipment; and

(6) Written acknowledgment from the student that the student will not allow other students to have access to the medication and monitoring equipment and that the student understands appropriate safeguards.

The Act provides that LEAs may restrict or revoke an individual student's privilege to possess and self-administer diabetes medication and operation of monitoring equipment due to noncompliance with school rules and provisions of the applicable service agreement or IEP, or due to any demonstrated unwillingness or inability on the part of the

student to safeguard the medication or monitoring equipment from access by other students. Where such restriction or revocation is implemented, the LEA must ensure that the medication and equipment is stored in an area accessible by the student and that the school nurse and/or other responsible personnel are appropriately informed.

Finally, the Act adds Section 1414.7 to the School Code, which specifically addresses the issue of delegation of health-related activities. Under Act 86, notwithstanding any other law to the contrary, the coordination or supervision of diabetes care to students as provided for in amended Section 1414 of the School Code shall not be construed as delegation by a licensed healthcare practitioner. LEA personnel designated to provide diabetes medications to a student shall not be deemed to be engaged in health-related activities reserved exclusively for licensed professionals.

While these changes to the School Code do not alter the existing duties to students with diabetes under federal law, we anticipate that there will be many questions regarding the implementation of these requirements, particularly as they relate to the designation of LEA personnel to perform such functions. We encourage you to review these changes to the School Code with personnel responsible for the implementation of such services. Should you have additional questions regarding these amendments to the School Code, or we can be of further assistance in addressing policies and procedures related to implementation, please do not hesitate to contact us.