

RESOLUTION 04-03-2010

DIGEST

Education: Health Care to School Children

Adds Education Code section 49414.7 to permit trained school employees to administer prescribed medications to school children.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution adds Education Code section 49414.7 to permit trained school employees to administer prescribed medications to school children. This resolution should be approved in principle because it would enable school children to receive their prescribed medications when a school nurse is not available.

This resolution would authorize a parent-designated volunteer school employee to administer prescribed medications to a pupil when a credentialed school nurse or other licensed health care professional is not available. The school employee would be trained and supervised in the administration of the prescribed medication, and would act in accordance with any instructions from the pupil's doctor. The resolution would exempt any such volunteer school employee from liability, so long as the employee acted in good faith and in substantial compliance with the instructions received.

There is a shortage of school nurses. The needs of those children who must receive medications during school hours would be better met if a trained school employee could administer those medications when a school nurse or other licensed health care professional is not available.

This resolution is similar to AB 1802 now pending in the Assembly. AB 1802, however, is limited to the administration of insulin to diabetic children.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to add Education Code section 49414.7 to read as follows:

- 1 §49414.7
- 2 (a) Notwithstanding the Nursing Practice Act (Chapter 6 (commencing
- 3 with Section 2700) of Division 2 of the Business and Professions Code) or any other
- 4 provision of law, the parent or guardian of a pupil with a medication dependent health
- 5 condition may designate one or more school employees for the purpose of
- 6 administering a
- 7 prescribed medication to the pupil as necessary during the regular school day, as
- 8 defined in
- 9 subdivision (g) of Section 601 of Title 5 of the California Code of Regulations, in the
- 10 event

11 that a credentialed school nurse or other licensed health care professional is not
12 immediately available on site at the school. A parent-designated school employee may
13 administer a prescribed medication pursuant to this section only (1) on a volunteer
14 basis, (2)
15 in accordance with the performance instructions set forth by the licensed health care
16 provider of the pupil, and (3) after receiving appropriate training pursuant to
17 subdivision
18 (b). The parent or guardian shall file a written statement, valid for a maximum of one
19 year,
20 indicating the names of the school employees being designated, stating that those
21 employees have volunteered to serve as parent-designated school employees and have
22 submitted the letter of intent described in subdivision (d), and acknowledging the
23 immunity from criminal and civil liability provided in subdivision (h). The school
24 district
25 shall keep a copy of this statement and shall obtain the statements required by
26 subdivision
27 (a) of Section 49423.
28 (b) A school employee may serve as a parent-designated school employee
29 pursuant to
30 subdivision (a) only if he or she has been trained in administering a prescribed
31 medication
32 by a licensed health care professional with expertise in the particular health condition
33 the
34 medication is being administered to treat. A health care professional employed by the
35 school district who provides training pursuant to this subdivision shall not be
36 responsible
37 for the supervision of the parent-designated school employee in administering
38 medication to the pupil.
39 (c) Within three business days of receiving a written request from the parent or
40 guardian of a pupil with a medication dependent health condition that school staff be
41 notified regarding the intent of the parent or guardian to designate school employees to
42 administer a prescribed medication to the pupil, a school district shall distribute to all
43 staff members a written notice regarding that request that contains all of the following
44 information:
45 (1) A statement that the parent or guardian of a child with a medication
46 dependent health condition is seeking to designate school employees to administer a
47 prescribed medication to the pupil.
48 (2) A statement identifying the health condition to be treated and the medication
49 prescribed;
50 (3) A statement, consistent with subdivision (d), that a designee will only
51 administer a prescribed medication on a volunteer basis and that the school district will
52 take no action against any staff member who does not volunteer for designation.
53 (4) A statement that training will be provided to all parent-designated school
54 employees, pursuant to subdivision (b).
55 (5) A statement that parent-designated school employees are protected from
56 liability pursuant to subdivision (h).
57 (6) Information regarding who to contact to volunteer to be a parent-designated
58 school employee.
59 (d) Each parent-designated school employee shall submit a voluntary letter of
60 intent stating the employee's willingness to serve as a parent-designated school

61 employee. A school employee shall not be required or coerced in any manner to serve
62 as a parent-designated school employee. The school district shall take no disciplinary
63 or retaliatory action against any school employee who does not volunteer to serve as a
64 parent-designated school employee.

65 (e) All materials necessary to administer a prescribed medication shall be
66 provided by the parent or guardian of the pupil.

67 (f) Notwithstanding any other provision of law, a licensed health care
68 professional, including a physician, credentialed school nurse, registered nurse, or
69 certificated public health nurse, may provide training to parent-designated school
70 employees in the administration of a prescribed medication and supervise those
71 employees in performing that task and such employees may administer such medication
72 in accordance with the provisions of this section.

73 (g) This section is not intended to alter or diminish the rights of pupils to
74 receive medication at school or to restrict the persons who may be designated by the
75 school district to administer that medication under any other provision of law. Nothing
76 in this section alters or diminishes the rights of eligible pupils or the obligations of
77 school districts under the federal Individuals with Disabilities Education Act (20 U.S.C.
78 Sec. 1400 et seq.) or Section 504 of the federal Rehabilitation Act (29 U.S.C. Sec. 701
79 et seq.), and the federal Americans with Disabilities Act (42 U.S.C. Sec. 12101 et seq.),
80 and the failure of a parent to designate a school employee pursuant to subdivision (a)
81 does not alter the school district's obligation to administer a prescribed medication
82 under those laws.

83 (h) A parent-designated school employee who, acting in good faith and in
84 substantial compliance with the instructions of the pupil's licensed health care
85 professional, administers a prescribed medication pursuant to this section shall not be
86 liable under state law in any criminal action or for civil damages in his or her individual
87 or official capacity as a result of administering the prescribed medication.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Alameda County Bar Association

STATEMENT OF REASONS:

Existing Law: Business and Professions Code section 2725(b)(2) and California Code of Regulations, title 5, section 604 explicitly authorizes certain categories of persons to administer medicines in California's public schools. Each pupil who is required to take, during the regular schoolday, medication prescribed for him or her by a physician, may be assisted by the school nurse or other designated individuals. In the absence of a credentialed school nurse or other licensed nurse, a school district may provide voluntary emergency medical training to school personnel, as defined, to administer emergency medical assistance to pupils with a medication dependent health condition, subject to specified conditions. (*See* 5 Cal. Code Regs., tit. 5, § 600 *et seq.*; Educ. Code § 49423.)

This Resolution: Would authorize a parent or guardian of a pupil with a medication dependent health condition, if a credentialed school nurse or other licensed health care professional is not immediately available onsite at the school, to designate one or more volunteer school employees to be authorized to administer a prescribed medication to the pupil as necessary during the regular school day.

The resolution would authorize a parent-designated school employee to administer a prescribed medication only (1) on a volunteer basis, (2) in accordance with the performance instructions set forth by the licensed health care provider of the pupil, and (3) after receiving appropriate training. The resolution would authorize a licensed health care professional to provide training to parent-designated school employees in the administration of a prescribed medication and to supervise those employees in performing that task. A parent-designated school employee who, acting in good faith and in substantial compliance with the instructions of the pupil's licensed health care professional, administers a prescribed medication would not be liable in any criminal action or for civil damages in his or her individual or official capacity as a result of administering the prescribed medication.

The Problem: The shortage of school nurses as well as the healthcare needs of all school children requires an expansion of the types of medications that may be administered during the course of the school day. As noted in pending legislation in the California Assembly (AB 1802) (which is similar to this resolution but is limited to the administration of insulin to children with diabetes) many students in California's public schools have been diagnosed with health conditions which require them to receive prescribed medication at various times during the school day. Receiving such prescribed medication in a timely manner is crucial in order to allow these students to have full access to the educational curriculum and to be able to attend school safely. According to the California School Nurses Organization, there is only one credentialed school nurse for every 2,700 pupils in the California public school system.

School districts need explicit options and added flexibility in providing prescribed medication to pupils. Parents of pupils with medication dependent health conditions should be permitted to designate volunteer school employees to be trained to administer a prescribed medication to the pupil.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

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