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HOUSE BILL 287

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

George Dodge, Jr.

AN ACT

RELATING TO HEALTH; ENACTING THE STUDENT DIABETES MANAGEMENT ACT TO PROVIDE FOR DIABETES MANAGEMENT BY STUDENTS AND SCHOOL PERSONNEL; PROVIDING FOR RULEMAKING, ENFORCEMENT AND PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Student Diabetes Management Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Student Diabetes Management Act:

A. "diabetes" means type one or type two diabetes mellitus; complications related to diabetes mellitus; or prediabetes;

B. "diabetes care personnel" means a school employee who volunteers to be trained and is trained in accordance with Section 3 of the Student Diabetes Management

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1 Act;

2 C. "diabetes medical management plan" means a
3 document that a student's personal health care practitioner and
4 parent or guardian develops that sets out the health services
5 that the student needs at school and that is signed by the
6 student's health care practitioner and parent or guardian;

7 D. "governing body" means:

8 (1) the school board of a school district;

9 (2) the entity that governs a state-chartered
10 or locally chartered charter school; or

11 (3) the entity that governs a private school;

12 E. "health care practitioner" means a person
13 licensed to provide health care in the ordinary course of
14 business;

15 F. "school" means an elementary, secondary, middle,
16 junior high or high school or any combination of those,
17 including a public school, state-chartered or locally chartered
18 charter school or private school;

19 G. "school employee" means any individual employed
20 by a school, any person employed by the department of health or
21 a local health department or by the public education department
22 who is assigned to a school or any contractor designated to
23 provide services at a school pursuant to the Student Diabetes
24 Management Act; and

25 H. "school nurse" means an individual who:

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1 (1) is a nurse who is authorized pursuant to
2 the Nursing Practice Act to practice as a professional
3 registered nurse;

4 (2) is licensed by the public education
5 department and the board of nursing as a school nurse; and

6 (3) provides services as a school nurse at a
7 school.

8 SECTION 3. [NEW MATERIAL] DIABETES CARE--DIABETES CARE
9 PERSONNEL--TRAINING.--

10 A. By December 31, 2017 and in consultation with
11 the American diabetes association, the department of health,
12 the New Mexico school nurses association and the juvenile
13 diabetes research foundation, the secretary of public education
14 shall adopt and promulgate rules for the training of school
15 employees for the care of students with diabetes. These rules
16 shall require each governing body to ensure that annual
17 diabetes training programs are provided for all school nurses
18 and diabetes care personnel. At a minimum, the training
19 guidelines shall address:

20 (1) recognition and treatment of hypoglycemia
21 and hyperglycemia;

22 (2) understanding the appropriate actions to
23 take when blood glucose levels are outside of the target ranges
24 indicated by a student's diabetes medical management plan;

25 (3) understanding health care practitioner

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1 instructions regarding diabetes medication drug dosage,
2 frequency and manner of administration;

3 (4) performance of finger-stick blood glucose
4 testing and ketone testing and recording of results;

5 (5) the administration of glucagon and insulin
6 and the recording of results;

7 (6) understanding how to administer glucagon
8 and insulin through the insulin delivery system;

9 (7) recognizing diabetes-related complications
10 that require emergency assistance; and

11 (8) as relates to students with diabetes,
12 understanding recommended schedules and food intake for meals
13 and snacks, the effect of physical activity upon blood glucose
14 levels and actions to be implemented in the case of schedule
15 disruption.

16 B. A governing body shall not require that diabetes
17 care personnel be health care practitioners.

18 C. Each governing body shall ensure that the
19 training established pursuant to Subsection A of this section
20 is provided to a minimum of three school employees at each
21 school attended by a student with diabetes. If at any time
22 fewer than three school employees are available to be trained
23 at a school, the principal or other school administrator shall
24 distribute to all staff members a written notice stating that
25 the school is seeking volunteers to serve as diabetes care

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1 personnel. The notice shall inform staff of the following:

2 (1) the school must provide diabetes care to
3 one or more students with diabetes and is seeking personnel
4 willing to be trained to provide that care;

5 (2) the tasks to be performed by diabetes care
6 personnel;

7 (3) that participation is voluntary and no
8 school, school district or governing body will take action
9 against any staff member who does not volunteer to be
10 designated;

11 (4) that training will be provided to
12 employees who volunteer to provide care;

13 (5) that trained personnel are protected from
14 liability for actions undertaken as diabetes care personnel as
15 provided pursuant to Section 9 of the Student Diabetes
16 Management Act; and

17 (6) the identity of the individual whom staff
18 should contact in order to volunteer to be diabetes care
19 personnel.

20 D. School employees shall not be subject to any
21 penalty or disciplinary action for refusing to serve as
22 diabetes care personnel. A school or governing body shall not
23 discourage employees from volunteering for training.

24 E. The training required pursuant to Subsection A
25 of this section shall be provided by:

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1 (1) a school nurse if the school has a school
2 nurse; or

3 (2) a health care practitioner with expertise
4 in diabetes, if the school district or private school does not
5 have a school nurse.

6 F. Each governing body shall ensure that the
7 following training is provided on an annual basis to all school
8 personnel who have primary responsibility for supervising a
9 student with diabetes during some portion of the school day and
10 to bus drivers responsible for the transportation of a student
11 with diabetes:

12 (1) recognition of hypoglycemia;

13 (2) recognition of hyperglycemia; and

14 (3) actions to take in response to diabetes-
15 related emergency situations.

16 SECTION 4. [NEW MATERIAL] DIABETES MEDICAL MANAGEMENT
17 PLAN.--

18 A. The parent or guardian of each student with
19 diabetes who seeks diabetes care while at school shall submit
20 to the school a diabetes medical management plan.

21 B. Each school that receives a diabetes medical
22 management plan shall review and implement the diabetes medical
23 management plan.

24 SECTION 5. [NEW MATERIAL] SCHOOL DIABETES CARE.--

25 A. A governing body shall ensure that all students

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1 with diabetes receive appropriate and needed diabetes care as
2 specified in students' diabetes medical management plans. In
3 accordance with the request of a parent or guardian of a
4 student with diabetes and the student's diabetes medical
5 management plan, a school nurse or, in the absence of a school
6 nurse, diabetes care personnel shall perform diabetes care
7 functions that shall include, at a minimum:

8 (1) checking and recording the student's blood
9 glucose levels and ketone levels or assisting the student with
10 checking and recording these levels;

11 (2) responding to blood glucose levels that
12 are outside of the student's target range;

13 (3) administering glucagon and other emergency
14 treatments as prescribed;

15 (4) administering insulin or assisting a
16 student in administering insulin through the insulin delivery
17 system that the student uses;

18 (5) providing oral diabetes medications; and

19 (6) following instructions regarding meals,
20 snacks and physical activity.

21 B. A school nurse or at least one diabetes care
22 personnel member shall be at each school where a student with
23 diabetes is attending and shall be available to provide care to
24 each student with diabetes as provided pursuant to Subsection A
25 of this section during regular school hours and during all

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1 school-sponsored activities, trips, extended offsite excursions
2 and extracurricular activities and on buses where the bus
3 driver is not a diabetes care personnel member.

4 SECTION 6. [NEW MATERIAL] APPLICATION OF OTHER LAWS.--

5 A. Notwithstanding any other provision of law, the
6 provisions of Subsection A of Section 5 of the Student Diabetes
7 Management Act do not constitute the practice of nursing and
8 shall be exempted from all applicable statutory or regulatory
9 provisions that restrict what activities can be delegated to or
10 performed by a person who is not a health care practitioner.

11 B. Notwithstanding any other provision of law, it
12 is lawful for a health care practitioner to provide training to
13 school employees in the activities set forth in Subsection A of
14 Section 5 of the Student Diabetes Management Act or to
15 supervise school personnel in performing these tasks.

16 C. Nothing in the Student Diabetes Management Act
17 diminishes the rights of eligible students or the obligations
18 of school districts under the federal Individuals with
19 Disabilities Education Act, Section 504 of the federal
20 Rehabilitation Act or the federal Americans with Disabilities
21 Act.

22 SECTION 7. [NEW MATERIAL] SCHOOL ASSIGNMENT--DIABETES
23 CARE PROVISION.--

24 A. Students with diabetes shall attend the school
25 they would otherwise attend if they did not have diabetes, and

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1 the diabetes care specified in Subsection A of Section 5 of the
2 Student Diabetes Management Act shall be provided at the
3 student's school. A governing body shall not restrict a
4 student who has diabetes from attending any school on the basis
5 that the student has diabetes, that the school does not have a
6 full-time school nurse or that the school does not have trained
7 diabetes care personnel.

8 B. A school shall not require or pressure parents
9 or guardians to provide diabetes care for a student with
10 diabetes at school or school-related activities.

11 SECTION 8. [NEW MATERIAL] DIABETES SELF-MANAGEMENT.--Upon
12 the written request of a parent or guardian of a student with
13 diabetes and authorization by the student's diabetes medical
14 management plan, a student with diabetes shall be permitted to
15 perform blood glucose checks, administer insulin through the
16 insulin delivery system that the student uses, treat
17 hypoglycemia and hyperglycemia and otherwise attend to the care
18 and management of the student's diabetes in the classroom, in
19 any area of the school or school grounds and at any
20 school-related activity. A student with diabetes shall be
21 permitted to possess on the student's person at all times all
22 necessary supplies and equipment to perform these monitoring
23 and treatment functions. If the student's parent or guardian
24 or the student requests, the student shall have access to a
25 private area for performing diabetes care tasks.

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1 SECTION 9. ~~[NEW MATERIAL]~~ IMMUNITY FROM CIVIL

2 LIABILITY.--No health care practitioner, school employee,
3 school nurse, school or governing body shall be liable for
4 civil damages or subject to disciplinary action under
5 professional licensing regulations or school disciplinary
6 policies as a result of the activities authorized by the
7 Student Diabetes Management Act when these acts are committed
8 as an ordinarily reasonably prudent person would have acted
9 under the same or similar circumstances.

10 SECTION 10. ~~[NEW MATERIAL]~~ ENFORCEMENT.--

11 A. Governing bodies shall provide a report to the
12 public education department by October 15, 2018 and by each
13 October 15 thereafter. The report shall:

14 (1) state how many students with diabetes are
15 attending schools in each school district; and

16 (2) provide documentation regarding the
17 compliance of the school district with the provisions of the
18 Student Diabetes Management Act.

19 B. By December 31, 2017, the secretary of public
20 education shall establish by rule the format of the report
21 required pursuant to Subsection A of this section and the
22 criteria for documentation.

23 C. The public education department shall publish
24 each report required pursuant to Subsection A of this section
25 on its website by November 15, 2018 and by each November 15

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thereafter.

D. Students with diabetes and their parents or guardians may bring an administrative complaint with the public education department or a lawsuit for declaratory, injunctive or monetary relief, against any school or governing body that fails to meet its obligations to train school personnel to provide diabetes care as provided in Section 3 of the Student Diabetes Management Act, to provide the diabetes care described in Section 5 of the Student Diabetes Management Act or to permit self-management of diabetes as outlined in Section 8 of the Student Diabetes Management Act. A student or parent or guardian who is a prevailing party in a lawsuit or administrative action brought under this section shall be entitled to reasonable attorney fees and costs. This right of action shall not alter or limit the remedies available under any other state or federal law, including Section 504 of the federal Rehabilitation Act, the federal Americans with Disabilities Act and the federal Individuals with Disabilities Education Act.