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SENATE BILL 48

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Mimi Stewart

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 diabetes management;

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

6 D. "governing body" means:

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

8 (2) the entity that governs a

9 state-chartered or locally chartered charter school; or

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

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

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

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

25 H. "school nurse" means a person 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--IMMUNITY.--

10 A. By December 31, 2019 and in consultation with
11 the American diabetes association, the department of health,
12 the New Mexico school nurse's association and the JDRF, the
13 secretary of health shall adopt and promulgate rules for the
14 training of school employees for the care of students with
15 diabetes. These rules shall require each governing body to
16 ensure that annual diabetes training programs are provided for
17 all school nurses and diabetes care personnel. At a minimum,
18 the training guidelines shall address:

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

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

24 (3) understanding health care practitioner
25 instructions regarding diabetes medication drug dosage,

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1 frequency and manner of administration;

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

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

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

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

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

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

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

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

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

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

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

12 (5) the identity of the person whom staff
13 should contact in order to volunteer to be diabetes care
14 personnel.

15 D. School employees shall not be subject to any
16 penalty or disciplinary action for refusing to serve as
17 diabetes care personnel. A school or governing body shall not
18 discourage employees from volunteering for training. No health
19 care practitioner, school employee, school nurse, school or
20 governing body shall be subject to disciplinary action under
21 professional licensing rules or school disciplinary policies as
22 a result of the activities authorized by the Student Diabetes
23 Management Act when these acts are committed as an ordinarily
24 reasonably prudent person would have acted under the same or
25 similar circumstances.

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

3 (1) a school nurse if the school has a school
4 nurse; or

5 (2) a health care practitioner with expertise
6 in diabetes.

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

13 (1) recognition of hypoglycemia;

14 (2) recognition of hyperglycemia; and

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

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

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

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

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

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

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

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

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

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

19 (5) providing oral diabetes medications; and

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

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

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1 this section during regular school hours and during all school-
2 sponsored activities, trips, extended offsite excursions and
3 extracurricular activities in which a student with diabetes is
4 a participant and on buses where the bus driver has not been
5 trained in diabetes care and a student with diabetes is a
6 passenger.

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

8 A. The provisions of Subsection A of Section 5 of
9 the Student Diabetes Management Act shall not constitute the
10 practice of nursing and shall be exempted from all applicable
11 statutory or regulatory provisions that restrict what
12 activities can be delegated to or performed by a person who is
13 not a health care practitioner.

14 B. Nothing in the Student Diabetes Management Act
15 shall diminish the rights of eligible students or the
16 obligations of school districts under the federal Individuals
17 with Disabilities Education Act, Section 504 of the federal
18 Rehabilitation Act or the federal Americans with Disabilities
19 Act of 1990.

20 SECTION 7. [NEW MATERIAL] SCHOOL ASSIGNMENT--DIABETES
21 CARE PROVISION.--

22 A. Students with diabetes shall attend the school
23 they would otherwise attend if they did not have diabetes, and
24 the diabetes care specified in Subsection A of Section 5 of the
25 Student Diabetes Management Act shall be provided at the

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1 student's school. A governing body shall not restrict a
2 student who has diabetes from attending any school on the basis
3 that the student has diabetes, that the school does not have a
4 full-time school nurse or that the school does not have trained
5 diabetes care personnel.

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

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

24 SECTION 9. [NEW MATERIAL] ENFORCEMENT.--

25 A. Governing bodies shall provide a report to the

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1 department of health and the public education department by
2 October 15, 2020 and by each October 15 thereafter. The report
3 shall:

4 (1) state how many students with diabetes are
5 attending the governing body's schools; and

6 (2) provide documentation regarding the
7 compliance of the school with the provisions of the Student
8 Diabetes Management Act.

9 B. By December 31, 2019, the secretary of health,
10 in consultation with the public education department, shall
11 establish by rule the format of the report required pursuant to
12 Subsection A of this section and the criteria for
13 documentation.

14 C. The department of health shall publish each
15 report required pursuant to Subsection A of this section on its
16 website by November 15, 2020 and by each November 15
17 thereafter.

18 D. Students with diabetes and their parents or
19 guardians may bring an administrative complaint with the
20 public education department for public schools or the
21 department of health for private schools against any school
22 or governing body that fails to meet its obligations to train
23 school personnel to provide diabetes care as provided in
24 Section 3 of the Student Diabetes Management Act, to provide
25 the diabetes care described in Section 5 of the Student

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1 Diabetes Management Act or to permit self-management of
2 diabetes as outlined in Section 8 of the Student Diabetes
3 Management Act. This right of action shall not alter or
4 limit the remedies available under any other state or federal
5 law, including Section 504 of the federal Rehabilitation Act,
6 the federal Americans with Disabilities Act of 1990 and the
7 federal Individuals with Disabilities Education Act.

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