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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
53rd Legislature, 1st Session, 2017

Bill Number	<u>SB148/aSJC/aSFC/ aHHHC</u>	Sponsor	<u>Stewart</u>
Tracking Number	<u>.205457.3</u>	Committee Referrals	<u>SEC/SJC/SFC;HHHC/HEC</u>
Short Title	<u>Student Diabetes Management Act</u>		
Analyst	<u>Force</u>	Original Date	<u>2/2/17</u>
		Last Updated	<u>3/15/17</u>

BILL SUMMARY

Synopsis of HHHC Amendment

The House Health and Human Services Committee amendment to SB148 as twice amended (SB148/aSJC/aSFC/aHHHC) reduces the number of school personnel who must be trained as diabetes care personnel from three to two, and removes the right of students or their parents or guardians to bring a lawsuit against schools or governing bodies for declaratory, injunctive or monetary relief.

Synopsis of SFC Amendment

The Senate Finance Committee amendment to SB148 as amended (SB148/aSJC/aSFC) adds immunity from liability under school disciplinary policies and professional licensing regulations for schools, governing bodies, employees, or school nurses as a result of activities authorized under the Student Diabetes Management Act when undertaken as an ordinarily reasonably prudent person would have acted under the same or similar circumstances.

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to SB148 (SB148/aSJC) clarifies that “school” under the Student Diabetes Management Act means a school that students attend in person, and that the duty of a nurse or diabetes care personnel to attend school functions is limited to those functions where a student with diabetes is participating. The amendment strikes protection from liability for trained personnel acting as diabetes care personnel pursuant to the act, as well as the provision making it lawful for health care practitioners to provide training to or supervise school employees in performing tasks required of diabetes care personnel, notwithstanding other provisions of law.

Synopsis of Original Bill

Senate Bill 148 (SB148) would create the Student Diabetes Management Act to train certain school personnel to help children with Type 1 and Type 2 diabetes and pre-diabetes, and provide for self-care by students with diabetes.

The bill requires the Public Education Department (PED) and the Department of Health (DOH) to work with the New Mexico School Nurses Association and the Juvenile Diabetes Research Foundation to create a school personnel training program for diabetes care. At least three employees from every school attended by a student with diabetes must be trained in diabetes care and management.

Every student with diabetes would be required to have a diabetes medical management plan, to be provided by the student's parent and medical practitioner, and implemented by school nurses and trained school employees, at least one of whom must be available to assist and care for the student during the school day, on school transportation, and on all field trips and off-site excursions.

School districts are not permitted to assign a student with diabetes to a different school on the basis of lack of trained personnel, nor are they permitted to pressure families to provide diabetes care for students while at school.

SB148 relieves health care practitioners, schools, governing bodies, school nurses, and other school employees of liability for civil damages or disciplinary action under professional licensing regulations or school discipline policies resulting from activities authorized by the bill so long as they act with reasonable prudence; however the bill explicitly retains school district obligations and student rights and remedies under federal law, including the Individuals with Disabilities Education Act (IDEA), the Americans with Disabilities Act (ADA), and Section 504 of the Rehabilitation Act.

The bill provides for students and their families to bring administrative complaints against PED, and sue for declaratory, injunctive, or monetary relief.

The act provides for student self-care upon the written request of a parent or guardian, and establishes reporting requirements for schools and PED and defines terms including "diabetes," "diabetes care personnel," "diabetes medical management plan," "governing body," "health care practitioner," "school," "school employee," and "school nurse."

FISCAL IMPACT

SB148/aSJC/aSFC/aHHHC does not contain an appropriation. Any costs associated with the requirements of the act, such as policy development, training, and materials, would be borne by the school district, charter school, PED, and/or DOH.

SUBSTANTIVE ISSUES

As noted by DOH, Type 1 and Type 2 diabetes are among the diseases most commonly affecting school-aged children, and both are increasing in American children and adolescents. Diabetes can have lifelong effects, and serious complications, such as kidney disease, nerve damage and retina damage, increasing from a baseline of 3 percent to 37 percent 11 years after diagnosis.

Supporting students in the management of the disease can help minimize associated complications.

A person’s likelihood to get diabetes is influenced by lifestyle factors, particularly with regard to diet and exercise, with obesity carrying an increased risk for diabetes. Obesity continues to be a challenge for American students. The National Center for Health Statistics at the Centers for Disease Control and Prevention indicates that the childhood obesity rate in the United States has increased from 15.4 percent in 2005 to 17.2 percent in 2015. The table below compares the percentage of New Mexico high school students engaging in potentially diabetes-related behaviors with the percentage of students from the country as a whole, according to the 2015 New Mexico Youth Risk and Resiliency Survey.

Indicator	NM%	US%
Was not physically active on any of the last seven days	14.6	14.3
Physically active on fewer than five of the last seven days	47.8	51.4
Did not get daily physical activity	69.1	72.9
Did not attend PE classes (in average school week)	50.2	48.4
Did not attend daily PE classes	72.9	70.2
Did not eat fruit or drink fruit juice	7.5	5.2
Did not eat vegetables	7.1	6.7
Drank at least one soda in the last seven days	76.5	73.8
Daily soda consumption	21.0	20.4
Two or more sodas per day	13.0	13.0
Did not eat breakfast in the last seven days	14.6	13.8
Did not eat a daily breakfast	66.1	63.7
Obese	15.6	13.9
Overweight	16.2	16.0
Fewer than eight hours sleep on an average school night	68.3	72.7

According to the PED 2015-2016 Annual School Health Services Summary Report, 25 percent of visits to the Student Health Office are related to chronic diseases, such as diabetes. The number of New Mexico public school students diagnosed with diabetes is 1,099, and supporting those students represents 17 percent of medically complex procedures performed by school nurses.

As PED notes, New Mexico students with diabetes are required to have an Individualized Healthcare Plan, Individualized Education Program, or Section 504 plan, all of which include student, parent, and health services staff engagement to support the student in their management of the disease.

PED and the Medical Board take different positions on the bill’s provision that diabetes care personnel cannot be required to be health care practitioners. The training involves specialized knowledge, such as recognizing hyper- and hypoglycemia, performing blood tests, administering medication, recognizing diabetes-related emergencies, and the interactions of diet and exercise on blood glucose levels. The Institute for Safe Medication Practices identifies diabetes medications such as insulin as “High-Alert” medications, which bear a heightened risk of causing significant patient harm if used in error. In fact, the Joint Commission recommends establishing a system where one nurse prepares a dose of insulin, while another reviews it. For these reasons, PED urges caution in the use of non-practitioners as diabetes care personnel. The Medical Board takes a different position, however, noting that the training program outlined in

the bill is excellent; protocols for evaluation and treatment of students with diabetes are carefully taught, and include the parents, primary care practitioners, and school nurses.

As noted by DOH, 32 of New Mexico's 33 counties are designated, in whole or in part, as areas experiencing shortages in the number of health care professionals engaged in practice. The bill attempts to address the need for nurses and other health care professionals to help students with diabetes management by training other school employees to act as diabetes care personnel.

ADMINISTRATIVE IMPLICATIONS

PED suggests that administrative requirements in SB148/aSJC/aSFC/aHHHC may tax the department's limited staff, as they include provision of notice to school districts and charter schools of the requirement to comply with the act: development and promulgation of rules for the required training of school employees; collection of reports on the number of students with diabetes; and the posting of the reports on the PED website within one month of receipt.

DOH notes the likelihood of increased burden on schools with higher numbers of poor, Hispanic, Native American, and African-American students, as these populations experience greater prevalence of diabetes than white and more affluent students, exacerbated by the fact that Hispanics and African-Americans are less likely than white students to receive recommended services for diabetes management.

TECHNICAL ISSUES

Section 6.12.2.9 NMAC, "Student's Right to Self Administer Certain Medications," contains PED requirements for students to administer medications to themselves, including insulin and glucagon. The Student Diabetes Management Act would supersede 6.12.2.9 NMAC, although many of the rule's provisions would harmonize with the requirements of the act.

The definition of "diabetes" includes pre-diabetes, which DOH indicates is inappropriate, suggesting the definition be amended to exclude pre-diabetes. Glucagon is not administered via an insulin delivery system, as is suggested on page 4, line 7.

OTHER SIGNIFICANT ISSUES

The provisions of SB148/aSJC/aSFC/aHHHC align with recommendations of the American Diabetes Association, which notes that federal law already gives students the right to receive the diabetes care they need to be safe in school and fully participate in school activities. To that end, schools should provide trained staff to monitor blood glucose levels and administer insulin and glucagon, as needed. Trained staff should also be available on all field trips, school-sponsored activity and excursions, and capable students should be permitted to self-manage their diabetes at any time, in any place. On the other hand, schools should not make family members travel to school to care for student needs, transfer students to different schools in order to receive necessary care, or prevent students with diabetes from participating in all school activities.

RELATED BILLS

Relates to HB87/aHHHC/aHJC, Diabetes Committee, which would require certain state agencies to form a Diabetes Committee to be convened by DOH.

Relates to HB160/HECS, School District Full-Time Nurses, which would amend the Public School finance Act to require school districts to include a full-time, department-licensed, registered school nurse in their budgets unless a waiver is granted.

Identical to HB287/HECS, Student Diabetes Management Act.

Relates to HJM7, Impact of Affordable Care Act Repeal, which requests the Superintendent of Insurance to convene a taskforce to study the impact of the repeal of the Affordable Care Act on New Mexico.

Relates to SB223/aSPAC, Essential Health & Disease Functions, which directs DOH to publish a state health improvement plan at least every five years.

Relates to SB241/aSEC/aSPAC, School Visual Arts & Physical Ed Standards, which directs PED to adopt content and performance standards for fine arts and physical education.

SJM11, Collect School Physical Ed Data, which requests PED and DOH to gather and provide information to the LESC to develop a plan for increased physical education instruction in elementary schools.

SOURCES OF INFORMATION

- LESC Files
- Department of Health
- LFC Files
- Medical Board
- Public Education Department

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