

AMENDED IN ASSEMBLY APRIL 27, 2009

AMENDED IN ASSEMBLY APRIL 20, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1430

Introduced by Assembly Member Swanson

February 27, 2009

An act to add Sections 49423.4 and 49426.3 to the Education Code, relating to pupil health.

LEGISLATIVE COUNSEL'S DIGEST

AB 1430, as amended, Swanson. Pupil health: licensed nurses.

Existing law establishes the public elementary and secondary school system in this state. Under this system, school districts throughout the state provide instruction to pupils in kindergarten and grades 1 to 12, inclusive, at the public elementary and secondary schools.

Existing law provides that any pupil who is required to take, during the regular schoolday, medication prescribed for him or her by a physician and surgeon may be assisted by the school nurse or other designated school personnel, or may carry and self-administer prescription auto-injectable epinephrine if the school district receives the appropriate written statements, as prescribed, from the physician and the parent, foster parent, or guardian of the pupil. Existing regulations of the State Department of Education specify procedures to be followed in the administration of medication to a pupil.

The existing Nursing Practice Act regulates the practice of nursing, which is defined in the act as those functions, including basic health care, that help people cope with difficulties in daily living that are associated with their actual or potential health or illness problems or

the treatment thereof, and that require a substantial amount of scientific knowledge or technical skill.

This bill would express findings and declarations of the Legislature with respect to a Superior Court ruling relating to the administration of medication to pupils in California public elementary and secondary schools. ~~This bill, notwithstanding the provision referenced above that authorizes assistance to be given to a pupil by school personnel during the schoolday under certain conditions,~~ *The bill* would require, *with certain exceptions*, that any medication that is administered to a pupil who is required to take, during the regular schoolday, medication prescribed for him or her by a physician or surgeon ~~shall~~ be administered by a health care professional operating within the scope of his or her practice.

The bill would specify that, for the purposes of these provisions, the practice of nursing is defined as specified in the Nursing Practice Act.

The bill would also codify the regulations of the State Department of Education with respect to the administration of medication to a pupil that are ~~referred~~ *referenced* above, *with certain exceptions*.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The Nursing Practice Act (Chapter 6 (commencing with
4 Section 2700) of Division 2 of the Business and Professions Code)
5 was designed to protect patients in the administration of
6 medications.

7 (b) According to the ruling of the Superior Court of California
8 in and for the County of Sacramento filed on December 26, 2008,
9 in the case of American Nurses Association et al. v. O'Connell et
10 al., the administration of medication to pupils in California public
11 elementary and secondary schools must be accomplished in
12 accordance with the requirements of the Nursing Practice Act.

13 (c) The court specifically found that state laws authorize the
14 administration of medication to a ~~student~~ *pupil* only by a licensed
15 health care professional acting within the scope of practice for
16 which he or she is licensed to perform services.

1 (d) The court noted the statutorily authorized exceptions that
2 authorize an unlicensed person to administer medication, but
3 specifically noted that assistance within the meaning of Section
4 49423 of the Education Code does not encompass the
5 administration of medications. The court ruled that the plain
6 meaning of assistance and administration, as well as the legislative
7 history of the section, indicate that assistance is distinct from,
8 rather than synonymous or interchangeable with, administration.

9 SEC. 2. Section 49423.4 is added to the Education Code, to
10 read:

11 ~~49423.4. (a) Notwithstanding Sections 49423, 49423.1, and~~
12 ~~49423.5, any medication that is~~

13 *49423.4. (a) Except as provided in Sections 49423, 49423.1,*
14 *49423.5, and 49426.3, any medication that is administered to a*
15 *pupil who is required to take, during the regular schoolday,*
16 *medication prescribed for him or her by a physician or surgeon*
17 *shall be administered by a licensed health care professional*
18 *operating within the scope of his or her practice.*

19 (b) Nothing in this section prohibits an individual from rendering
20 emergency medical aid in—~~either~~ *any* of the following
21 circumstances:

22 (1) The medical aid is authorized by Section 49414 or 49414.5.

23 (2) When it appears to the individual that the child is in clear
24 and present danger.

25 (3) *In the event of an emergency, as defined in subdivision (d)*
26 *of Section 2727 of the Business and Professions Code.*

27 (c) *Nothing in this section prevents unlicensed personnel from*
28 *assisting pupils with medication as provided by law.*

29 SEC. 3. Section 49426.3 is added to the Education Code, to
30 read:

31 49426.3. (a) For the purposes of this article, the practice of
32 nursing is defined as specified in subdivision (b) of Section 2725
33 of the Business and Professions Code.

34 (b) A school nurse may administer medication to a pupil or
35 otherwise assist a pupil in the administration of medication as
36 allowed by law and in keeping with applicable standards of
37 professional practice.

38 (c) Other designated school personnel may administer
39 medication to pupils or otherwise assist pupils in the administration
40 of medication as allowed by law and, if they are licensed health

1 care professionals, in keeping with applicable standards of
2 professional practice for their license.

3 (d) The pupil's parent or legal guardian may administer
4 medication to the pupil or otherwise assist the pupil in the
5 administration of medication as allowed by law.

6 (e) An individual designated to do so by the parent or legal
7 guardian may administer medication to the pupil or otherwise assist
8 the pupil in administration of medication as allowed by law. ~~A~~
9 ~~local education agency may establish rules governing the~~
10 ~~designation of an individual by a parent or legal guardian in order~~
11 ~~to ensure all of the following:~~

12 ~~(1) The individual is clearly identified.~~

13 ~~(2) The individual is willing to accept the designation.~~

14 ~~(3) The individual being designated is permitted to be present~~
15 ~~on the school site.~~

16 ~~(4) Any limitations on the individual's authority in his or her~~
17 ~~capacity as designee are clearly established.~~

18 ~~(5) The individual's service as a designee would not be~~
19 ~~inconsistent or in conflict with his or her employment~~
20 ~~responsibilities, if the individual being designated is employed by~~
21 ~~the local education agency. *The individual designated shall not be*~~
22 ~~*an employee of the local educational agency.*~~

COMPLETE BILL HISTORY

BILL NUMBER : A.B. No. 1430
AUTHOR : Swanson
TOPIC : Pupil health: licensed nurses.

TYPE OF BILL :

Active
Non-Urgency
Non-Appropriations
Majority Vote Required
Non-State-Mandated Local Program
Non-Fiscal
Non-Tax Levy

BILL HISTORY

2009

May 12 In committee: Set, first hearing. Further hearing to be set.
May 5 In committee: Hearing postponed by committee.
Apr. 28 Re-referred to Com. on B. & P.
Apr. 27 From committee chair, with author's amendments: Amend, and re-refer
to Com. on B. & P. Read second time and amended.
Apr. 21 Re-referred to Com. on B. & P.
Apr. 20 From committee chair, with author's amendments: Amend, and re-refer
to Com. on B. & P. Read second time and amended.
Apr. 2 Referred to Coms. on B. & P. and APPR.
Mar. 2 Read first time.
Mar. 1 From printer. May be heard in committee March 30.
Feb. 27 Introduced. To print.

CURRENT BILL STATUS

MEASURE : A.B. No. 1430
AUTHOR(S) : Swanson.
TOPIC : Pupil health: licensed nurses.
HOUSE LOCATION : ASM
+LAST AMENDED DATE : 04/27/2009

TYPE OF BILL :

Active
Non-Urgency
Non-Appropriations
Majority Vote Required
Non-State-Mandated Local Program
Non-Fiscal
Non-Tax Levy

LAST HIST. ACT. DATE: 05/12/2009

LAST HIST. ACTION : In committee: Set, first hearing. Further hearing to
be set.

COMM. LOCATION : ASM BUSINESS AND PROFESSIONS

TITLE : An act to add Sections 49423.4 and 49426.3 to the
Education Code, relating to pupil health.

Date of Hearing: May 12, 2009

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Mary Hayashi, Chair
AB 1430 (Swanson) - As Amended: April 27, 2009

SUBJECT : Pupil health: licensed nurses.

SUMMARY : Requires any necessary medication to be administered to a student by a licensed health care professional operating within the scope of his or her practice. Specifically, this bill :

- 1) Requires any necessary medication, excluding self-administered auto-injectable epinephrine or self-administered inhaled asthma medication, that is administered to a pupil during the regular schoolday, to be administered by a licensed health care professional operating within the scope of his or her practice.
- 2) States that nothing in the bill prohibits an individual from rendering emergency medical aid in any of the following circumstances:
 - a) Pupils suffering from an anaphylactic reaction or pupils with diabetes suffering from severe hypoglycemia;
 - b) When it appears to the individual that the child is in clear and present danger; or,
 - c) In the event of an emergency, including an epidemic or public disaster.
- 3) States that nothing in this section prevents unlicensed personnel from assisting pupils with medication as provided by law.
- 4) Permits a school nurse to administer medication to a pupil or otherwise assist a pupil in the administration of medication as allowed by law and in keeping with applicable standards of professional practice.
- 5) Permits other designated school personnel to administer medication to pupils or otherwise assist pupils in the administration of medication as allowed by law and, if they

are licensed health care professionals, in keeping with applicable standards of professional practice for their license.

- 6) Permits the pupil's parent or legal guardian to administer medication to the pupil or otherwise assist the pupil in the administration of medication as allowed by law.
- 7) Permits an individual designated by the parent or legal guardian, who shall not be an employee of the local educational agency, to administer medication to the pupil or otherwise assist the pupil in administration of medication as allowed by law.
- 8) Makes Legislative findings and declarations.

EXISTING LAW :

- 1) Provides that any pupil who is required to take, during the regular schoolday, medication prescribed for him or her by a physician and surgeon may be assisted by the school nurse or other designated school personnel, or may carry and self-administer prescription auto-injectable epinephrine if the school district receives the appropriate written statements, as prescribed, from the physician and the parent, foster parent, or guardian of the pupil. Existing regulations of the State Department of Education specify procedures to be followed in the administration of medication to a pupil.
- 2) Defines "administration" as "the direct application of a drug or device to the body of a patient or research subject by injection, inhalation, ingestion, or other means."

FISCAL EFFECT : Unknown. This bill is keyed non-fiscal.

COMMENTS :

Purpose of this bill . According to the author's office, this bill "would require that any medication that is administered to a pupil who is required to take, during the regular schoolday, medication prescribed for him or her by a physician or surgeon be administered by a licensed healthcare professional operating within the scope compliance with the Nursing Practice Act."

Background . Type 1 diabetes, usually diagnosed in early

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childhood, occurs when the body does not produce its own insulin, a hormone made in the pancreas that helps convert sugar from foods into energy. Without proper treatment, blood sugar levels can rise or fall dangerously, so diabetics must closely monitor their blood sugar and the carbohydrates they eat. Long term complications include heart and kidney disease, blindness and amputation.

Currently, according to an American Nurses Association (ANA), the nurse-to-student ratio in California schools is 1:2700, one of the lowest in the nation. California has a shortage of nurses in its schools and some districts have no nurses at all. Present law authorizes the administration of insulin to a student only by a licensed health care professional acting within his or her scope of practice, or certain other unlicensed persons under specific circumstances.

The genesis of this bill was the 2008 decision of the Sacramento Superior court in American Nurses Association v. Jack O'Connell.

This case struck down the authority of a Legal Advisory, developed as part of a settlement between the American Diabetes Association (ADA) and the California Department of Education, that permitted unlicensed school employees who are "adequately trained to administer insulin pursuant to the student's treating physician's orders" to administer the drug in state schools. The intent of the settlement, according to James Wood, the attorney representing the ADA, was to lessen the burden of parents, guardians, and grandparents whose diabetic children attended a public school without a school nurse. However, the ANA contested the settlement, and the court determined that schools must comply with the existing statutory requirement that only licensed and certain unlicensed individuals may administer insulin, regardless of "nursing shortages and fiscal constraints." Judge Lloyd G. Connely stated:

The court must enforce the legislative policy choices in the existing statutes delineating the personnel authorized to administer insulin and may not rewrite the statutes to include other school personnel, even if those other personnel have been adequately trained to administer insulin and even though evidence presented in this proceeding indicates that unlicensed persons with adequate training may safely administer insulin.

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Some individuals disappointed with the ruling applauded the intent, but lamented the practical implications. Jeffrey Ehrlich, a Claremont lawyer and a father of a diabetic child stated, "I'd love to have a nurse at every school, but the idea that nurses are the only ones that can help diabetic kids manage their health is ridiculous," he said. "It's not rocket science." Due to present restraints, many are concerned that if nurses are the only school personnel permitted to administer insulin, then, significant numbers of students with diabetes will not be able to receive insulin when they need it, thereby jeopardizing their long-term health and immediate safety.

This bill goes further than the question of insulin administration, and requires any necessary medication be administered by licensed health care professional operating within the scope of his or her practice, as specified.

Increasing the access to licensed healthcare professionals in California's schools may have a greater effect beyond proper

medication administration, however. According to a report by the Children's Advocacy Institute at the University of San Diego School of law, school-age children make up approximately 25% of the population of the state, and of these, approximately 763,000 are uninsured and low-income. Advocates argue that increasing the numbers of school nurses could help address basic health needs by targeting children at school. Approximately 25% of California students are overweight, and almost 40% are considered "unfit." Proper health training and early intervention may prevent the numbers of diabetic children in the future.

Arguments in support . "As sponsors of AB 1430 (Swanson), the California School Nurses Organization urges your support. This bill simply reiterates the language from another section of California law and places it into the Education Code. Over the years, educators and parents have been unaware of language in the Business and Professions Code and its application to the school site. Many unfortunate and sometimes unlawful decisions have been made over the years by school district boards and administrators, simply because they have not been aware of or understood the implications of any Code besides the Education Code. Still other school districts have knowingly ignored the law, choosing to put the safety and health of students - some medically fragile - at risk."

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Arguments in opposition . "The American Diabetes believes non-medical personnel can be trained to administer insulin safely. Several other states have passed laws to allow non-medical school personnel to administer insulin to students with diabetes. The Association's position has been endorsed by leading medical organizations, including the American Academy of pediatrics, the American Association of Clinical Endocrinologists, the American Association of Diabetes Educators, the American Dietetic Association, the Lawson Wilkins Pediatric Endocrine Society, and the Pediatric Endocrine Nursing Society. The American Diabetes Association believes AB 1430 is bad policy and urges you to withdraw this legislation from consideration."

REGISTERED SUPPORT / OPPOSITION :

California School Nurses Organization (sponsor)
California Federation of Teachers, American Federation of Teachers, AFL-CIO
California Nurses Association
California Teachers Association
Numerous individuals

Opposition

American Diabetes Association
California Academy of Family Physicians
Diabetes Coalition of California
Disability Rights Education & Defense Fund
Special Education Local Plan Area Administrators
Numerous individuals

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