



UPDATED MEMBER ALERT

MEDICAL SITUATIONS/MEDICATIONS (Epinephrine, Insulin, Diazepam/Diastat, Vaccinations)

This Alert provides guidance regarding common issues associated with providing of emergency medical care and medication to Students. The most recent substantive updates to this Alert arise from the passage of SB 277 (2015) regarding vaccinations, and are highlighted in italics below.

EMERGENCY CARDS/EMERGENCY CARE OPT-OUT

In keeping with Education Code Section 49408, parents need to complete and submit each year "emergency medical contact" information cards/forms (electronic or hard copy). Parents may not refuse to complete this information, but may "opt-out" of the Member's otherwise existing right and duty to provide and/or authorize emergency medical care when a parent or guardian cannot otherwise be timely contacted. Education Code Section 49407. For parents wishing to "opt out" of this statutory authorization, Members should use the previously prepared objection to the Providing of Emergency Medical Care form.

Although parents may submit the Objection Form for regular, on-campus curricular activities, the Field Trip, Athletic Participation, and Activity Participation forms expressly extend and confirm the Member's right to direct emergency medical care while the Student is participating in these activities. Unless a parent's objection is based on personal religious beliefs, a Student may be denied participation in such activities (because such activities are "privileges," not "rights") due to the increased hazards associated with off-campus, athletic, and/or special classes and programs, and the potential need for medical care and attention in situations where a volunteer (i.e., while chaperoning a field trip) may be the immediately supervising party. If a religious objection is filed, the Student should be allowed to participate in such activities and the parent may "cross out" the medical authorization sections of these forms

"VACCINATIONS – EMPLOYEES AND STUDENTS"

Effective July 1, 2016, California law requires Students to provide proof of specified immunizations, regardless of potential religious objections, unless prior to January 1, 2016 the parents submitted to the school a statement stating that immunizations are contrary to their beliefs, with that objection remaining effective until the Student enters the next "grade span," (pre-k to kindergarten, and grade 6 to grade 7). The other exception to the vaccination requirement is a Student who provides a physician's statement representing that immunization would be unsafe for the child, which may be temporary or permanent conditions, and which should specify which vaccines (or all vaccines) are covered by the medical exemption and whether the exemption is permanent or for a more limited period of time.

An ongoing dispute exists regarding special education students. Certain attorneys (including Schools Legal Services) have opined that federal disability laws control, and therefore special education students are not subject to California's vaccination laws. Other agencies, including the Orange County Department of Education, have reached a contrary conclusion, stating that special needs students are not exempt from these laws. The California School Board Association ("CSBA") has provided a third approach, noting:

Note: State law does not exempt from vaccination requirements students who qualify for an individualized education program (IEP). However, Health and Safety Code 120335, as

amended by SB 277 (Ch. 35, Statutes of 2015), specifies that its provisions do not prohibit a student who qualifies for an IEP from "accessing any special education and related service" required by his/her IEP. The district should consult legal counsel if it has questions about how to ensure compliance with vaccination requirements consistent with a student's IEP. The district may want to consider holding an IEP meeting to resolve any potential conflicts with the IEP.

Because the issue of special education students and vaccinations requirements is likely to generate litigation, Members should consult with legal counsel for guidance before a final enrollment decision is made (absent further guidance from CDE and/or a published Court Order) when a parent/guardian presents a special needs student for enrollment without complete vaccination records. Members should also promptly adopt updated CSBA BP/AR 5141.31 regarding Student vaccinations, which helps provide a reasonable and objective basis to ensure compliance.

Member Employees are not subject to these same requirements. There presently is no law, nor any provision in a negotiated collective bargaining agreement that could be found, that would allow a Member to require employees to be vaccinated, although the employee may be excluded from a site in order to avoid infection if there is a confirmed outbreak of a communicable disease at the site.

MEDICATION AND MEDICATION ASSISTANCE

I. MEDICATION ASSISTANCE AUTHORIZATION FORM/BOARD POLICY/ADMINISTRATIVE REGULATION

NBSIA's Medication Assistance Authorization Form ("MAAF") ensures compliance with all presently existing state and federal laws, including the Americans with Disabilities Act ("ADA"). While questions regarding "length" and use of "legal" language have been raised, the MAAF must not be changed without the potential loss of key legal defenses should a student suffer a medication-related incident.

NBSIA's recommended Board Policy and Administrative Regulation regarding medication assistance also remain current, and include legal standards, protections, and training and privacy obligations.

II. AUTO-INHALERS/EPI-PENS

Upon execution of an MAAF, Students are authorized by statute to carry on their person auto-inhalers and epi-pens. Education Code Sections 49423(a) & 49423.1(a). These items can also voluntarily be stored at a suitable location at a school site. Because such personal possession is authorized by statute, it may only be withdrawn in the case of disciplinary situations (misuse or threatened misuse of the inhalers or epi-pens).

Pursuant to Education Code Section 49414, Members must now also purchase and maintain at each school site epi-pens (Elem. – 1 reg./1 jr; Middle/High, at least one reg.), which must be expeditiously replaced once used. Members must also annually send a notice seeking volunteer employees to be trained in the administration of epi-pens for use in emergency situations.

As noted by the CDE, pursuant to Education Code Section 49414, a school district volunteer employee may administer epinephrine auto-injections ("epi-pens") to students facing an anaphylactic event. The volunteer employee (a) needs to receive instruction in the proper identification of an anaphylactic event and proper administration of the epinephrine, and (b) maintain a current certification in cardiopulmonary resuscitation from a recognized provider. The District needs to maintain a copy of the volunteer's(s') training

certifications, a copy of a duly signed MAAF, and a copy of a log showing the use/administration of such medications. As part of this effort, Members should review and ensure compliance with the CDE's standards for the administration of epinephrine, <http://www.cde.ca.gov/ls/he/hn/epiadmin.asp>.

III. INSULIN ADMINISTRATION

Following the California Supreme Court's decision in *American Nurses Association v. Torlakson*, which once again permitted volunteers to participate in the administration of insulin once properly trained and acting in accordance with a parent's and a physician's directions, CDE reinstated its Legal Advisory regarding Members' rights and obligations under disability rights laws to provide care and assistance to diabetic students. <http://www.cde.ca.gov/LS/he/hn/legaladvisory.asp>. Members are encouraged to seek volunteer employees will be trained and made available in keeping with all governing standards, which are similar to those for epi-pens, along with requirements to have training in diabetes management and any particular directions for safe use that might be directed by the Student's physician.

IV. DIAZEPAM/DIASTAT ADMINISTRATION

Pursuant to Education Code Section 49414.7, Members may elect (**optional**) to allow employees to volunteer to be trained, and to administer in emergency situations, the rectal form of valium (Diazepam/Diastat) to children suffering epileptic episodes. The CDE has developed regulations (published at 5 CAC §§ 623-627), which contain more stringent standards than other "voluntary" medication administration training and implementation standards, and include requirements to differentiate between different types of seizures, the proper method(s) to administer the medication to the student in question, emergency follow-up procedures, and "techniques and procedures to ensure pupil privacy. Volunteers can **only** be solicited by electronic notice to **all** staff no more than two times a year for each student. The volunteer must complete the required training before administering emergency anti-seizure medication.

V. TRAINING/COMPENSATION CONSIDERATIONS

All training of volunteers who will participate in medication administration must be provided by licensed personnel, which in many instances can include school nurses. A medical doctor or specialized physician may be required for special circumstances. If a Member's Job Descriptions for its internal physician(s) and/or school nurses include "training" as a primary or secondary job function, recognizing that the physician/nurse should already be well versed in emergency response and proper medication administration considerations, such training can occur during the Member's normal business operations.

In terms of "compensation," a view exists that as "volunteers" in the administration of medication, there is no right to additional compensation unless the employee is performing support services, as requested, outside of his/her normal work day. This issue may be subject to collective bargaining or other agreements or standards beyond the scope of this limited Alert.