

**ADVISORY
DIABETES MEDICAL MANAGEMENT LEGISLATION
ACT 86 of 2016
Prepared by the PSEA Legal Division
December 5, 2016**

Introduction

Act 86 of 2016 permits identified non-licensed school employees to perform diabetes care and management, including administering glucagon and insulin to students with diabetes.

In each school building attended by a student with diabetes, the school nurse, in consultation with the chief school administrator or a designee, may identify at least one school employee to manage diabetes care, including monitoring blood glucose and administering diabetes medication.

If the building in question does not have a full-time school nurse, the statute provides that “the chief school administrator may, but is not required to, consult with the school nurse assigned to that building to identify at least one school employee in the building.” See 24 P.S. § 14-1414.3(b). This statutory language is poorly drafted. While it is clear that the chief school administrator is not required to identify an employee to administer diabetes medication, it is less clear whether the administrator is required to consult with the school nurse assigned to the building in event that an identification is made. Since every school student falls under the caseload of a certified school nurse (CSN), PSEA believes that school administrators should consult with the CSN who is responsible for the student with diabetes before a decision is made to identify a non-licensed employee to provide diabetes management and care.

Prior to any administration of insulin or glucagon to the student with diabetes, three things must happen: 1) the employer must have written authorization from the student’s doctor and the parent or guardian; 2) the non-licensed employee must have the option to decline the assignment; and 3) the school employee, if he or she agrees to the assignment, must complete annual training modules (established by the Department of Health in coordination with the Department of Education) or receive annual education from a licensed health care practitioner (with expertise in the care and treatment of diabetes) that includes substantially the same information as in the training modules.

On November 22, 2016, the Department of Health (DOH) issued guidance titled 2016 Diabetes in School Children: Recommendations and Resource Guide for School Personnel. The recommendations, which were created with input from the Department of Education, PSEA, and other stakeholder groups, are available at:

[http://www.health.pa.gov/My%20Health/School%20Health/Documents/11.22.2016%20Diabetes
In School Children%20-%20DOH%20v3.pdf](http://www.health.pa.gov/My%20Health/School%20Health/Documents/11.22.2016%20Diabetes%20In%20School%20Children%20-%20DOH%20v3.pdf).

If any local or member becomes aware that their school employer is considering using this new law to identify non-licensed employees to perform diabetes care and management, they should contact their UniServ Representative for assistance.

PSEA is prepared to assist local associations should an employer try to identify non-licensed employees pursuant to the statute. To highlight the complexities of managing, assessing, and treating a diabetic student, PSEA has provided an advisory to local presidents which briefly describes glucagon and insulin, the various methods of medication delivery, and side effects, including the serious, life-threatening side effects associated with the improper administration of insulin. Additionally, local presidents have been encouraged to discuss the various options with their certified school nurses and PSEA field staff to determine the best approach for each local association.

Protections for School Nurses

The law includes several legal protections for school nurses. First, the law clarifies that any licensed healthcare professional who coordinates or supervises the provision of diabetes care, or trains non-licensed personnel in accordance with the law, is not delegating health-related activities to non-licensed school employees. 24 P.S. § 14-1414.7.

In addition, any licensed healthcare professional who coordinates, supervises, or trains non-licensed school employees in compliance with the law will be protected from criminal or civil liability and professional disciplinary action.

Implementation of the Law

We hope that most employers will understand that safe and appropriate diabetes care and management involves complex medical judgment and that the best way to protect students is to ensure there is treatment by a certified school nurse and, when necessary, a licensed health care aide. If the school nurse is responsible for diabetes care and treatment, it is unlikely that anyone will need to administer glucagon to students.

Under the law, the school nurse cannot be required to identify, or participate in the identification, of non-licensed staff to perform diabetes care and treatment. While the school nurse may choose to identify or participate in the identification of non-licensed staff, **the ultimate determination that non-licensed personnel will be trained to administer diabetes medication, monitor blood glucose, or perform other diabetes care should be made by the employer.** If the employer makes this determination, the nurse may wish to simply advise the employer of situations where the nurse believes the student needs additional care and treatment, but refrain from identifying a staff person to provide such care.

The law does not obligate school nurses to educate or train non-licensed school personnel in diabetes management. School administrators are responsible for coordinating training and education, and school nurses may assist with this task to ensure proper coordination of care and consistency with training. **PSEA recommends that school nurses refrain from educating and training non-licensed employees unless the school nurse has specialized training and**

credentials, such as a certified diabetes educator. In all circumstances, a certified diabetes educator or other qualified health care practitioner with expertise in the care and treatment of diabetes should develop and provide the training regarding diabetes care tasks, and document the training and competency of identified personnel.

As with all students in a nurse's caseload, the certified school nurse is responsible for coordinating the provision of care for diabetic students while under school jurisdiction. As such, the DOH guidance charges the school nurse with monitoring the competency of identified personnel, but the law does not obligate school nurses to supervise or evaluate other school personnel. **For labor law purposes, PSEA advises school nurses to contact their Uniserv Representative if they are asked to train, supervise, or evaluate non-licensed school staff in diabetes care and management.**

Finally, administrators do not have the authority to direct health services, and under no circumstances should the employer require identified personnel to make independent decisions about the daily, ongoing management of a student with diabetes. The certified school nurse, for all buildings in the school entity, has the right to raise concerns about the assignment of diabetes care and treatment to non-licensed staff. We recommend that the nurse raise these concerns in writing and maintain a copy of the communications with the administration about assignment of diabetes care and treatment to non-licensed staff.

Thus far, we have identified the following options for locals to consider in light of this new law.

1. **Notify the employer that the local is advising its members to “just say no” to any designation, both for administration of glucagon and insulin.** Employers should ensure that students are cared for by (i) hiring more school nurses; (ii) hiring LPNs or RNs who, while not certified as school nurses, are licensed and trained to administer medication; (iii) allowing parents to attend student trips or events as necessary to administer medication; or (iv) assigning the responsibility to school administration. The local should explain that using non-licensed bargaining unit school staff to engage in the care and treatment of diabetes is not in the best interests of the child and that for legitimate reasons, bargaining unit members are not comfortable taking on such responsibilities. Insulin is considered one of the most dangerous prescription drugs.¹ It is a powerful medication with serious consequences if misused, including death, seizure, or loss of consciousness. As well, the local should advise the school nurse to refrain from identifying non-licensed persons to administer medication to students with diabetes.
2. **The local could also take a modified position, which is to draw a distinction between glucagon and insulin.** In that case, the local would advise the employer and school nurse that in the local's view, it is acceptable for the nurse to identify

¹ <http://trofire.com/2016/09/26/deadliest-prescription-drugs-world-doctor-prescribed-one/>

non-licensed persons to administer glucagon. The local would likewise advise members that they could agree to identification for purposes of administration of glucagon but should “just say no” to the administration of insulin. Again, the law does not require the school nurse to identify a non-licensed employee to provide diabetes care.

3. **The local could take a different modified position, which is to draw a distinction between administration of diabetes medication and monitoring of glucose levels.** In that case, the local would advise the employer and school nurse that in the local’s view, it is acceptable for the nurse to identify non-licensed persons to monitor glucose levels. The local would likewise advise members that they could agree to identification for purposes of using monitoring equipment, but should “just say no” to the administration of either insulin or glucagon.
4. **Demand bargaining over the impact of the new law.** The decision by an employer to identify, or allow identification of, a non-licensed employee to administer glucagon or insulin is not a mandatory subject of bargaining. However, the employer must bargain over the impact. The local – in consultation with the school nurse, the identified, non-licensed employee, and PSEA field staff – could consider several proposals in impact bargaining. Non-licensed staff should never accept an assignment of diabetes care and treatment unless the employer and the local have concluded impact bargaining.
5. **Ensure appropriate training and safeguards for all bargaining unit members.** School employees who work with diabetic students may be expected to recognize the signs of hypoglycemia and take action to treat mild to moderate hypoglycemia through a fast-acting sugar source (i.e., glucose tablets or soda) if the school nurse, other health care practitioner, or identified trained personnel is unavailable. In such circumstances, the local association should ensure that all affected bargaining unit members have access to the student’s Emergency Care Plan, appropriate training, and any necessary materials. In addition, to establish that they are acting within the scope of employment, PSEA advises that affected bargaining unit members should request a written directive to perform any diabetes-related tasks.

Finally, locals should advise employees that they should never assume responsibility for the administration of medication or other diabetes care unless they are comfortable with the assignment.

As school nurses, you are uniquely aware of the specific health needs of every student in your care. You are also keenly aware of the limitations and challenges you may face due to the working conditions in your local (caseload, travel between school buildings, and the complexity of student health needs). It is important that certified school nurse members are involved in helping the local determine which option is in the best interest of student health and safety.

For further information, please contact your UniServ Representative.