

Date of Hearing: April 10, 2019

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
AB 743 (Eduardo Garcia) – As Amended, April 1, 2019

SUBJECT: Pupil health: medication assistance: written physician statement

SUMMARY: Requires a school district to accept the written statement from a physician or surgeon, who is contracted with a binational health plan which is licensed in California, for the purposes of authorizing a pupil to be assisted by a school nurse or other designated school personnel, or to carry and self-administer inhaled asthma medication that the pupil is required to administer during the regular schoolday. Specifically, **this bill:**

- 1) Requires a school district to accept the written statement from a physician or surgeon, who is contracted with a binational health plan which is licensed in California, for the purposes of authorizing a pupil to be assisted by a school nurse or other designated school personnel, or to carry and self-administer inhaled asthma medication, that the pupil is required to administer during the regular schoolday.
- 2) Makes other technical changes.

EXISTING LAW:

- 1) Requires, in order for a pupil to be assisted by a school nurse or other school personnel, or for the pupil to carry and self-administer prescription inhaled asthma medication, a school district to obtain both a written statement from the physician or surgeon detailing the name of the medication, method, amount, and time schedules by which the medication is to be taken, and confirming that the pupil is able to self-administer inhaled asthma medication, and a written statement from the parent, foster parent, or guardian of the pupil consenting to the self-administration, providing a release for the school nurse or other designated school personnel to consult with the health care provider of the pupil regarding any questions that may arise with regard to the medication, and releasing the school district and school personnel from civil liability if the self-administering pupil suffers an adverse reaction by taking medication pursuant to this section. (EC 49423.1)
- 2) Authorizes, through regulations, a local education agency (LEA) to establish specifications for the authorized health care provider's written statement, required as per (1) above, in order to ensure that:
 - a) The pupil is clearly identified.
 - b) The medication is clearly identified.
 - c) The dosage is clearly specified.
 - d) The period of time during which the medication is to be taken is clearly specified.

- e) Other information is obtained that is relevant to administering the medication to the pupil, or otherwise assisting the pupil in the administration of the medication.
 - f) An amended or new written statement is provided annually and whenever there is a change in the pupil's authorized health care provider, or a change in the medication, dosage, method by which the medication is required to be taken, or dates or times the medication is to be taken. (California Code of Regulation, Title 5, Section 602)
- 3) The Nursing Practice Act sets forth the scope of practice for nursing, which specifically includes the administration of medication. (Business & Professions Code Section 2725)
- 4) Requires a prepaid health plan operating lawfully under the laws of Mexico, that elects to operate a health care service plan in California, to apply for licensure as a health care service plan, and to comply with specified requirements, including that the prepaid health plan offers and sells in California only employer-sponsored group plan contracts exclusively for Mexican nationals legally employed in San Diego or Imperial counties, and for their dependents regardless of nationality. Requires that the health plan pay for, reimburse the cost of, or arrange for the provision or delivery of health care services that are provided or delivered wholly in Mexico, other than for emergency or urgent care services. (Health and Safety Code Section 1351.2)

FISCAL EFFECT: The Office of Legislative Counsel has keyed this bill as non-fiscal.

COMMENTS:

Need for the bill. According to the author, "In border towns, entities such as the Imperial County Office of Education, County of Imperial, and many others offer their employees bi-national insurance, meaning they can choose to receive health care in the United States or Mexico. Due to the higher cost of health care in the U.S., several employees opt to receive care for themselves and their children in Mexico.

Current school medical policies and practices fail to recognize the disparity between those afforded the opportunity of having domestic medical coverage and those that have no other choice but to travel to Mexico to receive care. Parents have been told, due to state and school policy, that prescribed medications from Mexico are not allowed.

Therefore, parents are being forced in these cases to seek a second opinion with a U.S. doctor at additional out-of-pocket expense."

High incidence of asthma in border communities. According to the Lucile Packard Foundation for Children's Health, "asthma is one of the most common chronic diseases among children in the U.S. and a leading cause of hospitalizations and absences from school. Asthma rates vary by region, demographics, environment, physician diagnostic practices, and access to care. Although identifying the impact of independent risk factors for asthma is difficult, low-income and minority children are at disproportionately high risk for severe symptoms, missed school days, and emergency room visits due to asthma. Asthma sufferers often manage symptoms with medication, trigger avoidance, and regular medical monitoring. However, children who face cost barriers to medication or treatment are less likely to have well-controlled asthma than children

with access to regular medical care, and may repeatedly be absent from school when their asthma flares up.”

A 2010 study by Mérida Palacio and others studied how air pollution was affecting children in the Mexicali area of Baja California. They focused on 258 healthy, non-asthmatic children ages 9 to 12, and found the children lost about 20 percent of their lung capacity during a period when the particle pollution was worse. Mérida said that study, which was presented at a 2010 conference, “shows how much children’s health is suffering. Their lung capacity is diminished, in the long run, reduced lung capacity translates into higher rates of asthma and chronic obstructive pulmonary disease, or COPD, as well as heart disease, strokes and other illnesses.”

The KidsData website, citing data from 2015-16, reports that the rate of children ever diagnosed with asthma is higher in Imperial County (23.2%) versus California as a whole (15.2%). California Environmental Health Tracking Program data shows 143 per 10,000, asthma-related emergency room visits for children ages 5-17, in Imperial County in 2016, versus 68 per 10,000 such visits for children in California as a whole.

Why use binational health insurance? According to a 2013 study, “*Informing public policy toward binational health insurance: Empirical evidence from California*”, “binational health insurance (BHI) between the United States and Mexico is a potential way to provide health insurance to the uninsured residing in the United States near the border, particularly uninsured immigrants from Mexico. Many individuals are uninsured, because health insurance premiums are unaffordable. BHI premiums may have the potential to be more affordable than conventional insurance premiums, because Mexico-based health care providers likely have lower reimbursement rates than United States-based providers. The premium savings from BHI plans will largely depend on the magnitudes of the provider reimbursement rate differences, as well as the share of enrollees’ health care utilization that takes place Mexico.

Commercial BHI health insurance plans have been available in California since 2000. In 2010, based on the authors’ estimates from contacting BHI plans and evaluating public records, there were approximately 120,000 enrollees within BHI plans.” (Fulton et. al)

Arguments in support. The Comité Civico Del Valle writes in support, “If Mexican-based health coverage and medication is acceptable for an industry to offer American beneficiaries, then school policies should be allowed to accept it as well. Currently, school medical policies and practices, with respect to prescribed medications from out-of-state or Mexico, fail to recognize the disparity between those able to afford domestic medical coverage and those made to travel to Mexico to receive medical care. As parents with out-of-state medical coverage have realized, prescribed medications from Mexico are not allowed, nor can be administered, to their children while attending school.”

Arguments in opposition. The California School Nurses Organization expresses numerous concerns with this bill’s provision to require schools to accept written statements from a physician licensed in another country as authorization to permit a pupil to be assisted with, or to be allowed to carry and self-administer medication during the school day. These include the following:

- If the written statement is provided in a language other than English, who would provide an accurate interpretation of the medical information contained?

- If the school nurse, or other school personnel, has questions about the medication or treatment of the pupil, how would they contact the medical professional who provided the written statement, to answer such questions?
- Medications in another country may have different names, contain different ingredients, have different dosages or strengths, all of which could impact the ability of the school nurse to care for the pupil's health.
- A binational health plan may not require that a member has a primary care physician, which is particularly critical for children with conditions such as asthma that require ongoing treatment and medication.

Recommended amendments. Committee staff recommends that the bill be amended as follows:

- 1) Ensure that a school nurse, or other school personnel, administering, or assisting a pupil with the administration of inhaled asthma medication, based upon an authorization by a medical professional in another country, as authorized by this section, not be subject to professional review, be liable in a civil action, or be subject to criminal prosecution for his or her acts or omissions in administering, or assisting a pupil with the administration of inhaled asthma medication.
- 2) Ensure that schools and school districts are protected from any liability related to school personnel administering, or assisting a pupil with the administration of inhaled asthma medication, based upon an authorization by a medical professional in another country, as authorized by this section.
- 3) Clarify that the written statement from the physician be made available to the school in both English and Spanish, and include contact information for the pupil's physician.

Prior and related legislation.

AB 2132 (Reyes), Chapter 832, Statutes of 2004, authorizes a pupil to carry and self-administer medication, including inhaled asthma medication, or to receive assistance from school personnel, as specified, if the school district receives written statements, as specified.

SB 1266 (Huff), Chapter 321, Statutes of 2014, requires school districts, county offices of education, and charter schools to provide emergency epinephrine auto-injectors to school nurses or trained personnel who have volunteered, as specified. Authorizes school nurses or trained personnel to use the epinephrine auto-injectors to provide emergency medical aid to persons suffering, or reasonably believed to be suffering, from an anaphylactic reaction.

REGISTERED SUPPORT / OPPOSITION:

Support

Comite Civico Del Valle, Inc.

Opposition

California School Nurses Organization
California Teachers Association

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