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LEGAL UPDATE

November 19, 2014

~~For For For For For~~
Susanne K. Reed
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To: Superintendents, Member School Districts (K-12)

From: Frank Zotter Jr., Sen. Assoc. General Counsel *FZ*

Subject: Legislation Permits District to Solicit Funds for Purchase and Maintenance of Automatic External Defibrillators (“AEDs”)
Memo No. 35-2014

On September 29, 2014 Governor Brown signed Assembly Bill 2217 allowing school districts to solicit funds for the purchase and maintenance of Automatic External Defibrillators (“AEDs”), also known as Automated External Defibrillators. The new law takes effect January 1, 2015 and incorporates a number of existing laws relating to the use of AED units, although its specific impact is relatively minor.

An AED is a portable device that can be used to provide emergency treatment for cardiac arrhythmias (i.e., heartbeat irregularities). The AED diagnoses an arrhythmia and applies electrical therapy to correct the arrhythmia, allowing the heart to reestablish an effective rhythm. It is intended to be used by non-medical personnel who have been trained in its use.

AB 2217 adds Education Code § 49417 and authorizes a public school to solicit and receive private funds to acquire and maintain one or more AED units. Any funds that are solicited for this purpose can be used only to purchase and maintain an AED, and to provide training to school employees for its use.

Prior to AB 2217, existing law had two statutes and one administrative regulation governing the ownership and maintenance of an AED: Health and Safety Code § 1797.196, Civil Code § 1714.21, and 22 Cal. Code of Regs. § 100031. The Health and Safety Code provision requires any person or entity acquiring an AED to comply with a variety of onerous requirements, and states that the owner or operator of the AED will have immunity from civil damages resulting from the use of its AED at the scene of an emergency *so long as the person or entity complies with all obligations of that statute.*

The Civil Code section actually provides the immunity from a lawsuit, if the person providing treatment with an AED at the scene of an emergency does so without compensation and does not act with gross negligence or wanton misconduct. Finally, 22 Cal. Code of Regs.

§ 100031 provides detailed requirements for the training of laypersons in the use of an AED, for coordinating an emergency response that includes use of an AED, and for testing those trained in its use.

Among the many requirements of Health and Safety Code § 1797.196 are that the person or entity acquiring the AED:

1. Comply with the regulations relating to placement of an AED;
2. Ensure that the AED is regularly tested according to its operation and maintenance guidelines set forth by the manufacturer, the American Heart Association, and the American Red Cross, and any applicable federal regulations;
3. Ensure that the AED is checked for readiness every 30 days if it has not been used within 30 days;
4. Ensure that any person who uses the AED for emergency care or treatment during a cardiac emergency also activates the Emergency Medical Services system as soon as possible, and reports the use of the AED to a licensed physician and the local EMS agency; and
5. Ensures that the persons who use the AED receive training in its use, and that there is one person with training for every five AED units acquired.

Failure to comply with these and other requirements can result in loss of the Civil Code § 1714.21 immunity.

As noted, the only change in the new law is that it permits schools to solicit private funds for the purchase of one or more AED units. It incorporates the existing provisions relating to the maintenance and use of an AED, and the immunity if a device is used, although those provisions would have applied to districts that acquired one or more AED units even without the new statute.

IMPLICATIONS FOR DISTRICTS:

Districts should very carefully consider whether to use the new statute to solicit funds to acquire an AED. There is currently no legal requirement that districts obtain such devices. If a district does decide to acquire an AED, it should consult with legal counsel about the full range of obligations it must comply with under Health and Safety Code § 1797.196 and 22 Cal. Code of Regs. § 100031 to ensure that, if the device is ever used, it will be entitled to the immunity provided by Civil Code § 1714.21. By acquiring an AED, a district will also be accepting various responsibilities—which may not be covered by the immunity if all obligations are not met. Our office also strongly encourages districts to consult with their insurance carriers regarding coverage in case of an AED-related issue.

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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