



SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

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LEGAL UPDATE

August 14, 2019

To: Superintendents, Member School Districts (K-12)
From: Kaitlyn Schwendeman, Schools Legal Counsel *KAS*
Subject: **AB 743 Amends the Requirements for Self-Administration of
Asthma Medications**
Memo No. 18-2019

Assembly Bill (“AB”) 743 (2019), attached, amends section 49423.1 of the Education Code to allow school districts to accept a written statement from a physician or surgeon contracted with a prepaid health plan lawfully operating under the laws of Mexico. Such a written statement must be (1) written in both Spanish and English and (2) include the name and contact information for the prescribing physician or surgeon.

The revised law also includes protections for school districts, school nurses and other school personnel to ensure that such persons will not be subject to liability, including civil liability, for “acts or omissions related to pupil self-administering inhaled asthma medication” pursuant to a valid written statement from a physician or surgeon. School nurses and personnel are also protected from criminal prosecution related to self-administration of asthma medication pursuant to a valid written statement under the revised law.

Please contact our office with questions regarding this Legal Update or any other 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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Assembly Bill No. 743

CHAPTER 101

An act to amend Section 49423.1 of the Education Code, relating to pupil health.

[Approved by Governor July 12, 2019. Filed with Secretary of State July 12, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 743, Eduardo Garcia. Pupil health: self-administration of prescribed asthma medication.

Existing law authorizes a school nurse or other designated school personnel to assist any pupil who is required to take, during the regular schoolday, medication prescribed for the pupil by a physician or surgeon if the school district receives specified written statements from the physician or surgeon and from the parent, foster parent, or guardian of the pupil. Existing law authorizes a pupil to carry and self-administer prescription inhaled asthma medication, if the school district receives (1) a written statement from a 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 (2) specified written statements from the parent, foster parent, or guardian of the pupil, including releasing the school district and school personnel from civil liability if the self-administering pupil suffers an adverse reaction by taking the asthma medication.

The Knox-Keene Health Care Service Plan Act of 1975 provides for the licensure and regulation of health care service plans by the Department of Managed Health Care. Existing law requires a prepaid health plan operating lawfully under the laws of Mexico that elects to operate a health care service plan in this state to apply for licensure as a health care service plan.

This bill would require a school district to accept a written statement provided by a physician or surgeon relating to a pupil carrying and self-administering inhaled asthma medication, from a physician or surgeon who is contracted with a prepaid health plan operating lawfully under the laws of Mexico that is licensed as a health care service plan in this state. The bill would require that written statement to be provided in both English and Spanish and to include the name and contact information for the physician or surgeon. The bill would provide that a school nurse or other school personnel shall not be subject to professional review, be liable in a civil action, or be subject to criminal prosecution for their acts or omissions relating to a pupil self-administering inhaled asthma medication in accordance with a written statement from such a physician or surgeon. The bill would also provide that a school district shall not be subject to civil

liability if a pupil self-administering inhaled asthma medication in accordance with a written statement from such a physician or surgeon suffers an adverse reaction.

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

SECTION 1. This act shall be known, and may be cited, as the Clear Air for All Act.

SEC. 2. Section 49423.1 of the Education Code is amended to read:

49423.1. (a) Notwithstanding Section 49422, a pupil who is required to take, during the regular schoolday, medication prescribed for the pupil by a physician or surgeon, may be assisted by the school nurse or other designated school personnel or may carry and self-administer inhaled asthma medication if the school district receives the appropriate written statements specified in subdivision (b).

(b) (1) In order for a pupil to be assisted by a school nurse or other designated school personnel pursuant to subdivision (a), the school district shall 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 a written statement from the parent, foster parent, or guardian of the pupil requesting that the school district assist the pupil in the matters set forth in the statement of the physician or surgeon.

(2) (A) In order for a pupil to carry and self-administer prescription inhaled asthma medication pursuant to subdivision (a), the school district shall 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.

(B) (i) A school district shall accept the written statement from a physician or surgeon, as specified in this paragraph, from a physician or surgeon who is contracted with a health plan licensed pursuant to Section 1351.2 of the Health and Safety Code. A written statement specified in this subparagraph shall be provided in both English and Spanish, and shall include the name and contact information for the physician or surgeon.

(ii) A school nurse or other school personnel shall not be subject to professional review, be liable in a civil action, or be subject to criminal prosecution for their acts or omissions relating to a pupil self-administering inhaled asthma medication in accordance with this subparagraph. A school district shall not be subject to civil liability if a pupil self-administering

inhaled asthma medication in accordance with this subparagraph suffers an adverse reaction.

(3) The written statements specified in this subdivision shall be provided at least annually and more frequently if the medication, dosage, frequency of administration, or reason for administration changes.

(c) A pupil may be subject to disciplinary action pursuant to Section 48900 if the pupil uses inhaled asthma medication in a manner other than as prescribed.