10. May Diabetes Care Tasks Be Performed by Non-Medical or Non-Nursing Personnel?

Disputes sometimes arise about whether diabetes care can be provided to students by school personnel who are not nurses. Diabetes health care professionals agree that the diabetes care tasks needed at school can be performed by non-nurses who receive appropriate training. Personnel must be available to students with diabetes at all times. Because a school nurse will not always be available, this requires that trained non-nursing personnel provide care. The extent to which care may be provided by non-health care professionals varies based on state law.

10.1 What, if any, medical license is required to perform blood glucose checks upon students or to administer insulin or glucagon?

It is sometimes assumed that only a nurse may administer insulin or glucagon, or perform certain other diabetes care tasks. Although a school nurse is the most appropriate person to regularly provide diabetes care, many schools do not have a school nurse. Even if a full-time nurse is present, additional personnel should be trained to provide routine and emergency diabetes care including tasks such as checking blood glucose levels and insulin and glucagon administration during the school day and during extracurricular activities and field trips when the nurse is unavailable. School personnel, parents, guardians, and others are routinely trained to administer insulin or glucagon.

Diabetes health care professionals agree that non-medical personnel (sometimes referred to as “trained diabetes personnel”) can and should be trained to provide diabetes care to students. It is important that these non-medical school staff members be trained and monitored by a school nurse or other health care professional. The provider of diabetes care must take relevant state laws into account (see Questions 10.4, 10.5). However, the absence of a licensed health care professional does not diminish a school’s obligation to accommodate a student (see Question 10.6).

Notes

Some school districts argue that only licensed health care professionals may provide diabetes care. This position may be based on state law; in some states, only school nurses can perform certain diabetes-related care tasks, such as glucagon injections, in the school setting. However, many states place no restrictions on who may provide care, and in other states the law is unclear. The Office for Civil Rights has declined to take a position on whether schools are required to authorize non-licensed school personnel to administer injections to students with disabilities, even where allowed under state law. *Concejo Valley (CA) Unified Sch. Dist.*, Complaint No. 09-93-1002, 20 IDELR 1276 (OCR 1993). However, OCR has recognized that, where staff can be trained to provide diabetes care, a nurse or other licensed staff person is not required. *Bradley County (TN) Sch. Dist.*, Complaint No. 04-04-1247, 43 IDELR 44 (OCR 2004) (“Neither the ADA nor the Section 504 regulation...
requires that the District employ or assign a full-time nurse or aide to diabetic students, as long as the District maintains a sufficient number of trained staff persons to provide the related aids and services to students with diabetes.”)

Many complaint resolutions approved by OCR contemplate that other trained staff persons may be used.  See, e.g., Wayne-Westland (MI) Community Schs, Complaint No. 15-00-1130, 35 IDELR 14 (OCR 2000) (nurse or “trained staff person” to be responsible for administering insulin and glucagon); Loudoun County (VA) Pub. Schs., Complaint Nos. 11-99-1003, 11-99-1064, 11-99-1069 (OCR 1999).  Further, according to OCR, the medical profession has recognized that lay people are easily trained to perform this care.  Conejo Valley (CA) Unified Sch. Dist., Complaint No. 09-93-1002, 20 IDELR 1276 (OCR 1993).  State administrative hearings considering the issue have concluded that although a nurse may be the preferable choice to administer medications, any individual properly trained could do so.  Hawaii State Educational Agency, Case No. 01-34 (Hawaii Dept. of Educ. 2001) (so holding with respect to glucagon injections).

10.2 What is the position of the American Diabetes Association regarding non-medical and non-nursing personnel providing diabetes care?

The position of the American Diabetes Association is that diabetes care tasks may be safely and appropriately delegated to non-medical and non-nursing personnel in the school setting.  It would be ideal for all health care services required by children with diabetes to be performed by a health care professional, such as a school nurse.  The reality, however, is that not every school has a school nurse and, even where a school has a school nurse assigned full time the nurse will not always be available (e.g., at field trips and extracurricular activities).  Therefore, proper diabetes care in the school setting requires delegation.

Notes

The position taken by the Association on delegation of diabetes care tasks is based on a peer-reviewed position statement from specialists in the area of pediatric endocrinology.  This statement is referenced in Question 8.2.  This position is also set forth in a Statement of Principles adopted as part of the Association’s Safe at Schools Campaign, which has been endorsed by key diabetes and other health care organizations (see Question 10.3).  This position statement is available through the web page for the safe at Schools campaign at http://www.diabetes.org/advocacy-and-legalresources/discrimination/school/safeschool.jsp.

10.3 What is the position of leading health organizations on delegation of diabetes care?

The National Diabetes Education Program (a federally sponsored partnership of the National Institutes of Health, the Centers for Disease Control, and more than 200 partner organizations) has taken the view that delegation of diabetes care can be safe.  The program’s publication Helping the Student with Diabetes Succeed: A Guide for School Personnel (see Question 1.5) states:

The diabetes medical community has found that non-medical personnel (called “trained diabetes personnel” in this guide) can be trained and supervised to safely provide and assist with diabetes care tasks in the school setting, including blood
May Diabetes Care Tasks Be Performed by Non-Medical or Non-Nursing Personnel?

glucose monitoring, insulin and glucagon administration, and urine ketone testing. These non-medical school staff members should be trained and monitored by the school nurse or a qualified health professional. Assignment of diabetes care tasks must take into account state laws that may be relevant in determining what tasks may be performed by non-medical personnel.

This statement represents not simply the view of the American Diabetes Association, but that of a wide range of other organizations, including medical, research, professional, educational, and other groups.

In addition, a number of major diabetes health professional and patient organizations, as well as other health care organizations, have endorsed the Association’s statement of principles adopted as part of its Safe at Schools campaign, which provides that non-medical personnel can provide diabetes care. These organizations include: American Association of Diabetes Educators, American Dietetic Association, Lawson Wilkins Pediatric Endocrine Society, Pediatric Endocrine Nurses Society, Children with Diabetes, and Juvenile Diabetes Research Foundation

10.4 May diabetes care tasks be delegated to non-medical school personnel?

Whether diabetes care tasks can be performed by non-medical school personnel depends in large part on state law. (See Question 10.5). Delegation of diabetes care tasks is acceptable and appropriate in most states. General practice recognizes that delegation can be a safe and fiscally responsible way to meet the health needs of school children. It is important, of course, that non-medical school personnel to whom tasks are delegated are properly trained to provide those services (see Question 9.12).

Notes

“Delegation” in the health care context has been defined as the “transfer of responsibility for the performance of an activity from one individual to another while retaining accountability for the outcome.” American Nurses Association, Position Statement on Registered Nurse Utilization of Unlicensed Assistive Personnel, Attachment I Definitions (December 11, 1992), available at: http://www.nursingworld.org/readroom/position/uap/uapuse.htm. It is widely accepted by schools and health care providers that delegation is necessary.

Delegation should be approached cautiously and professionally. While a simple “yes” or “no” answer is often desired, the reality is that the answer is most often “it depends.” See W. Va. Board of Examiners of Registered Professional Nurses, Guidelines for Determining Acts That May Be Delegated or Assigned By Licensed Nurses (2001), available at: http://www.lpnboard.state.wv.us/scope.pdf.


Summarizing what is appropriate, the National Council of State Boards of Nursing gives these “Five Rights of Delegation”:
• Right Task
  One that is delegable for a specific patient.

• Right Circumstances
  Appropriate patient setting, available resources, and other relevant factors considered.

• Right Person
  Right person is delegating the right task to the right person to be performed on the right person.

• Right Direction/Communication
  Clear, concise description of the task, including its objective, limits and expectations.

• Right Supervision
  Appropriate monitoring, evaluation, intervention, as needed, and feedback.

10.5 Do state laws provide for delegation of diabetes care tasks?

State law may regulate who may perform diabetes care tasks and whether a given task is something that must be delegated by a nurse or other health care professional before a non-licensed person may perform it. If it is a task that must be delegated, the question becomes whether state law allows the task to be delegated to non-medical or non-nursing personnel. What tasks these personnel can perform can and do vary from one state to another.

Notes

A number of states expressly contemplate delegation of diabetes care. See, e.g., Indiana Code §§ 34-30-14-2, 34-30-14-4. Others are not specific but define by statute or regulation that the practice of a health care profession such as medicine or nursing includes “delegation” of tasks. See, e.g., 225 Ill. Comp. Stat. 65/5-10(l). As such, some form of delegation is generally recognized and permitted under state law.

Nearly all states have adopted statutes or regulations regulating what kinds of health care tasks may be delegated to non-medical personnel. While a state-by-state review of laws on delegation is beyond the scope of this notebook, advocates need to be aware of state law when addressing this issue. A review of various state laws and regulations leads to some general conclusions:

First, statutes and regulations addressing delegation generally do not specifically reference diabetes care tasks in particular. Rather, these laws address delegation of health care or nursing tasks in general. All states regulate the practice of nursing and other health care professions by specifying that certain tasks may only be performed by a licensed nurse or other professional. If a task is defined by the state as being part of the practice of nursing, then it cannot be performed by a non-licensed person unless the state also permits delegation of that task by a licensed professional to that person. State laws typically define the scope of nursing practice and the scope of authority to delegate in general terms. Where health care or nursing tasks may be delegated, it usually may be assumed that at least some
diabetes care tasks also may be delegated. General authorizations of delegation may include some specific limitations, such as prohibiting subcutaneous injections.

Second, most states recognize that some delegation of nursing care tasks is permitted. The nurse or other professional maintains supervisory responsibility and must be confident that the person to whom a task is delegated is properly trained and capable of providing the service.

Third, some diabetes care tasks are not necessarily within the scope of what are considered nursing tasks for the purpose of delegation in the school setting. For example, blood glucose monitoring is usually not considered a nursing task. Tasks which are not part of the practice of nursing may be performed by non-licensed personnel designated by the district without the need for the task to be delegated by a nurse.

Fourth, while some states have specific statutes or rules with regard to delegation, others do not. Those that have specific statutes or rules often apply them to nurses in general and not precisely to school nurses. A school nurse will usually be subject to the general laws pertaining to nurses and to those rules specific to the school setting.

Fifth, many states appear to accept that assistance may be provided by unlicensed individuals in cases of emergencies. Some states make this clear by statute or rule, while others do not.

Finally, states vary on whether insulin and/or syringes require a prescription. A distinction on delegation is sometimes made with regard to the administration of an over-the-counter medication (which is allowed) and those that require a prescription (which may allow for only limited delegation). Prescriptions are frequently obtained, but this is often done for health insurance reasons and not because it is actually required.

10.6 Do state restrictions on delegation of diabetes care tasks, if any, limit a school’s obligation to provide such services?

No. Where delegation is not permitted, the school must provide appropriately licensed personnel to provide services.

Notes

The lack of a school nurse is not an appropriate reason for failing to provide services required by a student with diabetes. *Prince George’s (MD) County Schools*, Complaint No. 03-02-1258, 39 IDELR 103 (OCR 2003). A student with diabetes may not be excluded from school when a nurse is not present. *Hashbrouck Heights Sch. Dist.*, Complaint No. 02-01-1121 (OCR 2001) (assurances made to resolve complaint that school denied student a free appropriate public education by requiring parent to remove student with diabetes from school when nurse was not present). Where the school nurse or other trained person is absent or unavailable, a back-up is required. *Lee County (FL) School Dist.*, 4Complaint No. 04-06-1300, 46 IDELR 228 (OCR 2006) (district had resolved allegation that there was no provision for care when nursing staff were not present by “develop[ing] a Clinic Back-up Plan to address provision of services to diabetic students in the absence of nursing personnel and/or in the event of an emergency.”); *Wayne-Westland (MI) Community Schs*, Complaint No. 15-00-1130, 35 IDELR 14 (OCR 2000) (complaint resolution required designation of a nurse or trained staff person as having primary responsibility for administration of insulin and glucagon, but also designation of a back-up); *Northeastern Clinton Central Sch. Dist.*, Complaint No. 02-01-1131 (OCR 2001) (complaint resolved, in part, by commitment that school would adopt “a protocol that provides for the Student’s diabetes care needs during field trips or
participation in any other extracurricular activities or when a nurse is not present at the School”); Puyallup Sch. Dist. No. 3, Complaint No. 10-02-1104 (OCR 2002) (voluntary resolution agreement stipulated that school would adopt “procedures for the student's health and diabetes care needs during field trips, participation in any other extracurricular activities, or when a nurse is not present at school”); Jamestown Area (P.A) Sch. Dist., Complaint No. 03-02-1117, 37 IDELR 260 (OCR 2002) (school district agreed to implement a procedure including designating a back-up person for the school nurse to administer glucagon to student as needed).

The legal advisory issued by the California Department of education as part of the settlement in K.C. v. O'Connell (see Question 9.10) addresses the question of what a district is required to do where state law does not permit delegation. The advisory, at part IV.A, sets out the state’s position (disputed by the American Diabetes Association and the other plaintiffs) that non-licensed school personnel are not authorized under state law to administer insulin to students. However, at part IV.B the advisory makes clear that this interpretation of state law is not a justification for districts failing to provide needed services, because federal law (Section 504, the ADA, and IDEA) require such services to be provided. The advisory states:

Clearly the first set of personnel who are authorized to administer insulin pursuant to a Section 504 Plan or an IEP are those persons who are expressly so authorized under California law, as set forth in Part IV.A, supra. … In CDE’s view, the list cannot be taken as exhaustive because [school districts] must also meet federal requirements -- even if the personnel expressly authorized by California are not available. In practical terms, this means that the methodology followed by some [school districts] of training unlicensed school employees to administer insulin during the school day to a student whose Section 504 Plan or IEP so requires it is a valid practice pursuant to federal law. If the [school district] determines that insulin administration by [licensed health care professionals] are not available or feasible, then unlicensed school employees with appropriate training would be authorized under federal law to administer insulin in accordance with the student's Section 504 Plan or IEP. … When federal and state laws are reconciled, it is clear that it is unlawful for [a school district] to have a general practice or policy that asserts that it need not comply with the IDEA or Section 504 rights of a student to have insulin administered at school simply because a licensed professional is unavailable.


Where a school district chooses, either based on law or district policy, not to allow appropriately trained non-licensed school personnel to administer insulin and/or glucagon, the school must still provide the needed care, either by having a nurse or other licensed medical professional available to do so or through alternative response systems that do not have a negative impact on a student's otherwise appropriate placement. Conejo Valley (CA) Unified Sch. Dist., Complaint No. 09-93-1002, 20 IDELR 1276 (OCR 1993); Gettysburg Area School District, Case 1984/02-03 (Pa. State Educational Agency 2003). Moreover, a policy providing that only school nurses may administer injections cannot be the exclusive or controlling factor in determining a child’s placement. See Question 8.5.