

Senate Bill No. 161

CHAPTER 560

An act to add and repeal Section 49414.7 of the Education Code, relating to pupil health.

[Approved by Governor October 7, 2011. Filed with
Secretary of State October 7, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

SB 161, Huff. Schools: emergency medical assistance: administration of epilepsy medication.

Existing law provides that in the absence of a credentialed school nurse or other licensed nurse onsite at the school, a school district is authorized to provide school personnel with voluntary medical training to provide emergency medical assistance to pupils with diabetes suffering from severe hypoglycemia.

This bill, until January 1, 2017, would authorize a school district, county office of education, or charter school to participate in a program to provide nonmedical school employees with voluntary emergency medical training to provide, in the absence of a credentialed school nurse or other licensed nurse onsite at the school or charter school, emergency medical assistance to pupils with epilepsy suffering from seizures, in accordance with guidelines developed by the State Department of Education in consultation with the State Department of Public Health. The bill would require the State Department of Education to post these guidelines on its Internet Web site by July 1, 2012. The bill would allow a parent or guardian of a pupil with epilepsy who has been prescribed an emergency antiseizure medication by the pupil's health care provider, to request the pupil's school to have one or more of its employees receive voluntary training, as specified, in order to administer the emergency antiseizure medication, as defined, in the event that the pupil suffers a seizure when a nurse is not available. The bill would require a school district, county office of education, or charter school that elects to train school employees to ensure that the school or charter school distributes an electronic notice, as specified, to all staff regarding the request. The bill would authorize the State Department of Education to include, on its Internet Web site, a clearinghouse of best practices in training nonmedical personnel in administering an emergency antiseizure medication pursuant to these provisions. The bill would make various legislative findings and declarations, and state the intent of the Legislature in enacting this measure.

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

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) All individuals with exceptional needs have a right to participate in a free appropriate public education, and that special instruction and services for these individuals are needed in order to ensure they have the right to an appropriate educational opportunity to meet their unique needs in compliance with the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).

(2) The safety and welfare of a pupil with epilepsy is compromised without immediate access to an emergency antiseizure medication and, therefore, clarification is needed to ensure that nonmedical school staff, who have volunteered and have been trained in its correct administration, may administer an emergency antiseizure medication.

(3) As used in this section, “immediate access” means the time period that the pupil’s health care provider states that an antiseizure medication must be administered, provided that it is within the timeframe that a licensed medical person or paramedic can reasonably be expected to respond and be available.

(b) It is the intent of the Legislature that individuals with exceptional needs and children with disabilities under the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), and Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794) shall have a right to an appropriate educational opportunity to meet their unique needs, and that children suffering from seizures due to epilepsy have the right to appropriate programs and services that are designed to meet their unique needs. In order to meet that goal, it is the intent of the Legislature that licensed health care professionals train and supervise employees of school districts, county offices of education, and charter schools to administer an emergency antiseizure medication to children with epilepsy in the public schools. The American Academy of Pediatrics and the Epilepsy Foundation of America support training of school employees to administer an emergency antiseizure medication and believe that an emergency antiseizure medication may be safely and effectively administered by trained school employees. The Legislature further finds and declares that, in the absence of a credentialed school nurse or other licensed nurse onsite at the school, it is in the best interest of the health and safety of children to allow trained school employees to administer an emergency antiseizure medication to pupils in public schools.

SEC. 2. Section 49414.7 is added to the Education Code, to read:

49414.7. (a) It is the intent of the Legislature that, whenever possible, an emergency antiseizure medication should be administered by a school nurse or licensed vocational nurse who has been trained in its administration.

(b) Notwithstanding Sections 2052 and 2732 of the Business and Professions Code, in the absence of a credentialed school nurse or other licensed nurse onsite at the school or charter school, a school district, county

office of education, or charter school may elect to participate in a program, pursuant to this section, to allow nonmedical employees to volunteer to provide medical assistance to pupils with epilepsy suffering from seizures, upon request by a parent or guardian pursuant to subdivision (c). If the school district, county office of education, or charter school elects to participate in a program pursuant to this section, the school district, county office of education, or charter school shall provide school employees who volunteer pursuant to this section with voluntary emergency medical training, that is consistent with the training guidelines established pursuant to subdivision (m), to provide emergency medical assistance to pupils with epilepsy suffering from seizures. A school employee with voluntary emergency medical training shall provide this emergency medical assistance using guidelines approved on the department's Internet Web site pursuant to subdivision (m), and the performance instructions set forth by the licensed health care provider of the pupil. A school employee who does not volunteer or who has not been trained pursuant to subdivision (m) shall not be required to provide emergency medical assistance pursuant to this section.

(c) If a pupil with epilepsy has been prescribed an emergency antiseizure medication by his or her health care provider, the pupil's parent or guardian may request the pupil's school to have one or more of its employees receive training pursuant to this section in the administration of an emergency antiseizure medication in the event that the pupil suffers a seizure when a nurse is not available.

(d) Pursuant to Section 504 of the federal Rehabilitation Act of 1973, as amended, (29 U.S.C. Sec. 794), and the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), upon receipt of the parent's or guardian's request pursuant to subdivision (c), the school or charter school shall notify the parent or guardian that his or her child may qualify for services or accommodations under the Section 504 plan or an individualized education program, assist the parent or guardian with the exploration of that option, and encourage the parent or guardian to adopt that option if it is determined that the child is eligible for a Section 504 plan or an individualized education program.

(e) The school or charter school may ask the parent or guardian to sign a notice verifying that the parent or guardian was given information about Section 504 of the federal Rehabilitation Act of 1973 and the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), and that the parent or guardian understands that it is his or her right to request a Section 504 plan or an individualized education program at any time.

(f) If the parent or guardian does not choose to have the pupil assessed for a Section 504 plan or an individualized education program, the school or charter school may create an individualized health plan, seizure action plan, or other appropriate health plan designed to acknowledge and prepare for the child's health care needs in school. The plan may include the involvement of trained volunteer school employees or a licensed vocational nurse.

(g) In training employees pursuant to this section, the school district, county office of education, or charter school shall ensure the following:

(1) A volunteer receives training from a licensed health care professional regarding the administration of an emergency antiseizure medication. A staff member who has completed training shall, if he or she has not administered an emergency antiseizure medication within the prior two years and there is a pupil enrolled in the school who may need the administration of an antiseizure medication, attend a new training program to retain the ability to administer an emergency antiseizure medication.

(2) Any agreement by an employee to administer an emergency antiseizure medication is voluntary, and an employee of the school or charter school or an employee of the school district or county office of education, or the charter school administrator, shall not directly or indirectly use or attempt to use his or her authority or influence for the purpose of intimidating, threatening, coercing, or attempting to intimidate, threaten, or coerce any staff member who does not choose to volunteer, including, but not limited to, direct contact with the employee.

(3) Any employee who volunteers pursuant to this section may rescind his or her offer to administer an emergency antiseizure medication up to three days after the completion of the training. After that time, a volunteer may rescind his or her offer to administer an emergency antiseizure medication with a two-week notice, or until a new individual health plan or Section 504 plan has been developed for an affected pupil, whichever is less.

(4) The school or charter school shall distribute an electronic notice no more than twice per school year per child to all staff that states the following information in bold print:

(A) A description of the volunteer request, stating that the request is for volunteers to administer an emergency antiseizure medication to a pupil experiencing a severe epileptic seizure, in the absence of a school nurse, and that this emergency antiseizure medication is an FDA approved, pre-dosed, rectally administered gel that reduces the severity of epileptic seizures.

(B) A description of the training that the volunteer will receive pursuant to paragraph (1).

(C) A description of the voluntary nature of the volunteer program, which includes the information described in paragraph (2).

(D) The volunteer rescission timelines described in paragraph (3).

(5) The electronic notice described in paragraph (4) shall be the only means by which a school or charter school solicits volunteers.

(h) An employee who volunteers pursuant to this section shall not be required to administer an emergency antiseizure medication until completion of the training program adopted by the school district, county office of education, or charter school and documentation of completion is recorded in his or her personnel file.

(i) If a school district, county office of education, or charter school elects to participate pursuant to this section, the school district, county office of

education, or charter school shall ensure that each employee who volunteers under this section will be provided defense and indemnification by the school district, county office of education, or charter school for any and all civil liability, in accordance with, but not limited to, that provided in Division 3.6 (commencing with Section 810) of Title 1 of the Government Code. This information shall be reduced to writing, provided to the volunteer, and retained in the volunteer's personnel file.

(j) If there are no volunteers, then the school or charter school shall renotify the pupil's parent or guardian of the option to be assessed for services and accommodations guaranteed under Section 504 of the federal Rehabilitation Act of 1973 and the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).

(k) A school district, county office of education, or charter school that elects to participate pursuant to this section shall have in place a school district, county office of education, or charter school plan that shall include, but not be limited to, all of the following:

(1) Identification of existing licensed staff within the district or region who could be trained in the administration of an emergency antiseizure medication and could be available to respond to an emergency need to administer an emergency antiseizure medication. The school district or charter school shall consult with the county office of education to obtain this information.

(2) Identification of pupils who may require the administration of an emergency antiseizure medication.

(3) Written authorization from the parent or guardian for a nonmedical school employee to administer an emergency antiseizure medication.

(4) The requirement that the parent or guardian notify the school or charter school if the pupil has had an emergency antiseizure medication administered within the past four hours on a schoolday.

(5) Notification of the parent or guardian, by the school or charter school administrator or, if the administrator is not available, by another school staff member, that an emergency antiseizure medication has been administered.

(6) A written statement from the pupil's health care practitioner that shall include, but not be limited to, all of the following:

(A) The pupil's name.

(B) The name and purpose of the medication.

(C) The prescribed dosage.

(D) Detailed seizure symptoms, including frequency, type, or length of seizures that identify when the administration of an emergency antiseizure medication becomes necessary.

(E) The method of administration.

(F) The frequency with which the medication may be administered.

(G) The circumstances under which the medication may be administered.

(H) Any potential adverse responses by the pupil and recommended mitigation actions, including when to call emergency services.

(I) A protocol for observing the pupil after a seizure, including, but not limited to, whether the pupil should rest in the school office, whether the

pupil may return to class, and the length of time the pupil should be under direct observation.

(J) Following a seizure, the pupil's parent and guardian and the school nurse shall be contacted by the school or charter school administrator or, if the administrator is not available, by another school staff member to continue the observation plan as established in subparagraph (I).

(I) A school district, county office of education, or charter school that elects to allow volunteers to administer an emergency antiseizure medication shall compensate a volunteer, in accordance with that employee volunteer's pay scale pursuant to Section 45128, when the administration of an emergency antiseizure medication and subsequent monitoring of a pupil requires a volunteer to work beyond his or her normally scheduled hours.

(m) (1) The department, in consultation with the State Department of Public Health, shall develop guidelines for the training and supervision of school and charter school employees in providing emergency medical assistance to pupils with epilepsy suffering from seizures and shall post this information on the department's Internet Web site by July 1, 2012. The guidelines may be developed in cooperation with interested organizations. Upon development of the guidelines, the department shall approve the guidelines for distribution and shall make those guidelines available upon request.

(2) The department shall include, on its Internet Web site, a clearinghouse for best practices in training nonmedical personnel to administer an emergency antiseizure medication to pupils.

(3) Training established pursuant to this subdivision shall include, but not be limited to, all of the following:

(A) Recognition and treatment of different types of seizures.

(B) Administration of an emergency antiseizure medication.

(C) Basic emergency followup procedures, including, but not limited to, a requirement for the school or charter school administrator or, if the administrator is not available, another school staff member to call the emergency 911 telephone number and to contact the pupil's parent or guardian. The requirement for the school or charter school administrator or other school staff member to call the emergency 911 telephone number shall not require a pupil to be transported to an emergency room.

(D) Techniques and procedures to ensure pupil privacy.

(4) Any written materials used in the training shall be retained by the school or charter school.

(5) Training established pursuant to this subdivision shall be conducted by one or more of the following:

(A) A physician and surgeon.

(B) A physician assistant.

(C) A credentialed school nurse.

(D) A registered nurse.

(E) A certificated public health nurse.

(6) Training provided in accordance with the manufacturer's instructions, the pupil's health care provider's instructions, and guidelines established

pursuant to this section shall be deemed adequate training for purposes of this section.

(n) (1) The school or charter school administrator or, if the administrator is not available, another school staff member shall notify the credentialed school nurse assigned to the school district, county office of education, or charter school if an employee at the schoolsite administers an emergency antiseizure medication pursuant to this section.

(2) If a credentialed school nurse is not assigned to the school district, county office of education, or charter school, the school or charter school administrator or, if the administrator is not available, another school staff member shall notify the superintendent of the school district, or his or her designee, the county superintendent of schools, or his or her designee, or the charter school administrator, or his or her designee, as appropriate, if an employee at the schoolsite administers an emergency antiseizure medication pursuant to this section.

(3) A school or charter school shall retain all records relating to the administration of an emergency antiseizure medication while a pupil is under the supervision of school staff.

(o) The pupil's parent or guardian shall provide all materials necessary to administer an emergency antiseizure medication, including the information described in paragraph (6) of subdivision (k). A school or charter school shall not be responsible for providing any of the necessary materials.

(p) For purposes of this section, the following definitions apply:

(1) An "emergency antiseizure medication" means diazepam rectal gel and emergency medications approved by the federal Food and Drug Administration for patients with epilepsy for the management of seizures by persons without the medical credentials listed in paragraph (5) of subdivision (m).

(2) "Emergency medical assistance" means the administration of an emergency antiseizure medication to a pupil suffering from an epileptic seizure.

(q) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.