

CHAPTER 3**(HB 98)**

AN ACT relating to health services in schools, and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 156.502 is amended to read as follows:

- (1) As used in this section:
 - (a) "Health services" means the provision of direct health care, including the administration of medication; the operation, maintenance, or health care through the use of medical equipment; or the administration of clinical procedures. "Health services" does not include first aid or emergency procedures; and
 - (b) "School employee" means an employee of the public schools of this Commonwealth.
- (2) Health services shall be provided, within the health care professional's current scope of practice, in a school setting by:
 - (a) A physician who is licensed under the provisions of KRS Chapter 311;
 - (b) An advanced practice registered nurse, registered nurse, or licensed practical nurse who is licensed under the provisions of KRS Chapter 314;
 - (c) *A nonlicensed health technician that has the administration of health services in his or her contract or job description as a job responsibility and who is delegated responsibility to perform the health service by a physician, advanced practice registered nurse, or registered nurse and has been trained and approved in writing by the delegating physician or delegating nurse for delegable health services;* or
 - ~~(d)(e)~~ A school employee who is delegated responsibility to perform the health service by a physician, advanced practice registered nurse, or registered nurse; and
 1. Has been trained by the delegating physician or delegating nurse for the specific health service, if that health service is one that could be delegated by the physician or nurse within his or her scope of practice; and
 2. Has been approved in writing by the delegating physician or delegating nurse. The approval shall state that the school employee consents to perform the health service when the employee does not have the administration of health services in his or her contract or job description as a job responsibility, possesses sufficient training and skills, and has demonstrated competency to safely and effectively perform the health service. The school employee shall acknowledge receipt of training by signing the approval form. A copy of the approval form shall be maintained in the student's record and the personnel file of the school employee. A delegation to a school employee under this paragraph shall be valid only for the current school year.
- (3) If no school employee has been trained and delegated responsibility to perform a health service, the school district shall make any necessary arrangement for the provision of the health service to the student in order to prevent a loss of a health service from affecting the student's attendance or program participation. The school district shall continue with this arrangement until appropriate school personnel are delegated the responsibility for health care in subsection (2) of this section.
- (4) A school employee who has been properly delegated responsibility for performing a medical procedure under this section shall act as an agent of the school and be granted liability protection under the Federal Paul P. Coverdell Teacher Liability Protection Act of 2001, Pub. L. No. 107-110, unless the claimant establishes by clear and convincing evidence that harm was proximately caused by an act or omission of the school employee that constitutes negligence, willful or criminal misconduct, or a conscious, flagrant indifference to the rights and safety of the individual harmed.
- (5) Nothing in this section shall be construed to deny a student his or her right to attend public school and to receive public school services, or to deny, prohibit, or limit the administration of emergency first aid or emergency procedures.

➔Section 2. KRS 158.838 is amended to read as follows:

- (1) (a) ***Beginning July 15, 2014***, the board of each local public school district and the governing body of each private and parochial school or school district shall have at least one (1) school employee at each school who has met the requirements of KRS 156.502 on duty during the entire school day to administer ***or assist with the self administration of*** the following medication~~[in an emergency]~~:
 - 1.~~[(a)]~~ Glucagon subcutaneously~~[, using a glucagon emergency kit,]~~ to students with diabetes who are experiencing hypoglycemia or other conditions noted in the health care practitioner's written statement under subsection (2)(b) of this section;~~[and]~~
 - 2.~~[(b)]~~ ***Insulin subcutaneously, through the insulin delivery method used by the student and at the times and under the conditions noted in the health care practitioner's written statement under subsection (2)(b) of this section; and***
 3. ***A seizure rescue medication approved by the United States Food and Drug Administration and any successor agency; [Diazepam rectal gel in a prefilled unit dose delivery system.]***
 - (b) ***For those assigned the duties under paragraph (a) of this subsection, the training provided under KRS 156.502 shall include instruction in administering insulin and glucagon, as well as recognition of the signs and symptoms of hypoglycemia and hyperglycemia and the appropriate steps to be taken to respond to these symptoms.***
 - (c) ***Any training program or guidelines adopted by any state agency for training of school personnel in the diabetes care tasks covered by this section shall be fully consistent with training programs and guidelines developed by the American Diabetes Association. Notwithstanding any state agency requirement or other law to the contrary, for purposes of this training a local school district shall be permitted to use any adequate and appropriate training program or guidelines for training of school personnel in the diabetes care tasks covered under this section.***
- (2) Prior to administering ***any of the medications listed under subsection (1)(a) of this section***~~[glucagon or diazepam rectal gel]~~ to a student, the student's parent or guardian shall:
 - (a) Provide the school with a written authorization to administer the medication at school;
 - (b) Provide a written statement from the student's health care practitioner, which shall contain the following information:
 1. Student's name;
 2. The name and purpose of the medication;
 3. The prescribed dosage;
 4. The route of administration;
 5. The frequency that the medication may be administered; and
 6. The circumstances under which the medication may be administered; and
 - (c) Provide the prescribed medication to the school in its unopened, sealed package with the label affixed by the dispensing pharmacy intact.
 - (3) The statements required in subsection (2) of this section shall be kept on file in the office of the school nurse or school administrator.
 - (4) The school district or the governing body of each private and parochial school or school district shall inform the parent or guardian of the student that the school and its employees and agents shall not incur any liability as a result of any injury sustained by the student from any reaction to any medication ***listed under subsection (1)(a) of this section that a parent or guardian has authorized the school district to administer to a student*** to treat a hypoglycemic ***or hyperglycemic*** episode or a seizure or its administration, unless the injury is the result of negligence or misconduct on behalf of the school or its employees. The parent or guardian of the student shall sign a written statement acknowledging that the school shall incur no liability except as provided in this subsection, and the parent or guardian shall hold harmless the school and its employees against any claims made for any reaction to any medication ***listed under subsection (1)(a) of this section that a parent or guardian has authorized the school district to administer to a student*** to treat a hypoglycemic ***or hyperglycemic*** episode or a seizure or its administration if the reaction is not due to negligence or misconduct on behalf of the school or its employees.

- (5) The permission for the administration of **any of the medications listed under subsection (1)(a) of this section**~~[either glucagon or diazepam rectal gel]~~ shall be effective for the school year in which it is granted and shall be renewed each following school year upon fulfilling the requirements of subsections (2) to (4) of this section.
- (6) The school nurse or school administrator shall check the expiration date monthly for each **medication listed under subsection (1)(a) of this section that is**~~[emergency glucagon kit or diazepam rectal gel prefilled unit-dose delivery system]~~ in the possession of the school. At least one (1) month prior to the expiration date of each medication, the school nurse or school administrator shall inform the parent or guardian of the expiration date.
- (7) **Upon the written request of the parent or guardian of the student and written authorization by the student's health care practitioner, a student with diabetes shall be permitted to perform blood glucose checks, administer insulin through the insulin delivery system the student uses, treat hypoglycemia and hyperglycemia, and otherwise attend to the care and management of his or her diabetes in the school setting and at school-related activities. A student shall be permitted to possess on his or her person at all times necessary supplies and equipment to perform these monitoring and treatment functions. Upon request by the parent or student, the student shall have access to a private area for performing diabetes care tasks.**
- (8) (a) **Beginning July 15, 2014, a school district shall permit a student who has diabetes or a seizure disorder to attend the same school the student would attend if the student did not have diabetes or a seizure disorder. Such a student may only be transferred to a different school based on health care needs if the individualized education program team, the Section 504 team, or if appropriate, the student's health services team, makes the determination that the student's health condition requires that the student's care be provided by a licensed health care professional at a different school. For the purpose of this determination, the teams shall include the parent or guardian. The parent or guardian may invite the student's treating physician to the team meeting and the team shall consider the physician's input, whether in person or in written form, when making this determination. This determination shall be based on individualized factors related to the student's health conditions. A school district shall not prohibit a student who has diabetes or a seizure disorder from attending any school on the sole basis that:**
1. **The student has diabetes or a seizure disorder;**
 2. **The school does not have a full-time school nurse; or**
 3. **The school does not have school employees who are trained in accordance with KRS 156.502 and assigned to provide care under this section.**
- (b) **Parents or guardians of students who have diabetes or a seizure disorder shall not be required or pressured by school personnel to provide care for a student with diabetes or a seizure disorder during regular school hours or during school-related activities in which the student is a participant. For the purposes of this paragraph, a participant is not a student who merely observes the activity.**
- (9) The requirements of subsections (1) to (8)~~[(6)]~~ of this section shall apply only to schools ~~that have a student enrolled who:~~
- (a) Has a seizure disorder and has **a seizure rescue medication approved by the United States Food and Drug Administration and any successor agency**~~[diazepam rectal gel in a prefilled unit-dose delivery system]~~ prescribed by the student's health care provider; or
 - (b) Has diabetes mellitus and has **any of the medications listed under subsection (1)(a) of this section**~~[a glucagon emergency kit]~~ prescribed by the student's health care provider.
- ~~(10) [(8)]~~ Nothing in this section shall be construed to require a school employee to consent to administer **medications listed under subsection (1)(a) of this section**~~[glucagon or diazepam rectal gel]~~ to a student if the employee does not otherwise consent to provide the health service under KRS 156.502.
- (11) **Notwithstanding any other provision of the law to the contrary:**
- (a) **The administration of the medications listed under subsection (1)(a) of this section by school employees shall not constitute the practice of nursing and shall be exempt from all applicable statutory and regulatory provisions that restrict the activities that may be delegated to or performed by a person who is not a licensed health care professional; and**

(b) A licensed health care professional may provide training to or supervise school employees in the administration of the medications listed under subsection (1)(a) of this section.

➔Section 3. Whereas children that live with diabetes deserve the same educational opportunities as their classmates, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Signed by Governor March 5, 2014.