2013 HOUSE HUMAN SERVICES

HB 1276

2013 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

HB 1276
January 22, 2013
17532

☐ Conference Committee

Jocelyn Gallagher

Explanation or reason for introduction of bill/resolution:
Relating to medication administration in primary and secondary public schools and exemptions from the Nurse Practices Act.

Minutes: attached testimony 1, 2, 3

Chairman Weisz: Opened the hearing on HB 1276.

Rep. Porter: Todd Porter district 34, Mandan introduced and supports the bill. This bill creates a new section in the chapter dealing with schools talking about the administration of medication. Section 2 exempts schools from the Nurse Practices Act for administration of medication.

Rep. Laning: (1:57) Section 2 seems incomplete, is it missing something or is it an add-on?

Rep. Porter: The wording is from the Nurse Practices act so it is not incomplete. When drafted they picked that paragraph.

Rep. Mooney: Are we including personnel other than school nurses to accommodate schools that might not have school nurses on staff?

Rep. Porter: Yes.

John Martinson: With ND School Boards Association. (3:31) The issue of administrating medication in schools without liability protection and without training has persisted for years. We have tried in past legislative sessions to have something done about this. Last session our proposed bill was not supported so we are back with a new plan. At this point the school secretary or teachers administer the medication at the request of parents. They can opt out if uncomfortable dispensing medication, etc. and this also includes an exemption for liability for those employees who do choose to provide this service. It provides an opportunity for training which we think is necessary. The training can be burdensome. Teachers are busy enough teaching and don't have the time for lengthy training.

Rep. Mooney: (6:02) You said you were providing for training, where is that in here?

John Martinson: The training isn't outlined in detail. The training could be in the administrative rules with the Department of Public Instruction. It is not specified in law.

Rep. Fehr: If a student has particular medical needs and staff is not comfortable administering medication and they opt out, does that mean the students' needs won't be met?

John Martinson: It's possible that they won't.

Bev Neilson, ND Council of Educational Leaders: (7:34) We have federal and state mandates that require us to provide extensive services to children with special needs and have no funding for school nurses. Over the years the practice has been who is there all the time hands those pills to the kids. Probably not very legal, in reality no other options but to quit providing that service to the parents. Our first choice would be funding of school nurses. This bill protects the school and kids. We need permission to do it and liability protection.

Kayla Pulvermacher in for Dakota Draper, Representing ND Education Association: testified in support of the bill. (10:47) (See Testimony #1)

Rep. Silbernagel: How many schools in ND so not have nurses?

Kayla Pulvermacher: The vast majority do not have school nurses.

Dr. Constance Kalanek, RN Executive Director of ND Board of Nursing: (12:36) testified in support of the bill. (See Testimony #2)

Vice-Chair Hofstad: (15:35) Explain to me the educational component that is within subsection 9, would the board of nursing be a part of that? How would you envision that working?

Dr. Constance Kalanek: No I don't believe we would be. The authority for medication administration programs 1 and 2 was given to the Health Dept. at a previous session.

Rep. Porter: Maybe it would be prudent that you and Dr. Martinson get together and work through what amendments would be necessary so the components from what they are looking for and from nurse practices act worked in harmony since both agree of the final intent.

Dr. Constance Kalanek: Certainly, with our legal counsel at the table.

Chairman Weisz: Further questions from the committee? Anyone else in support of 1276? Anyone here in opposition?

Karen McDonald, RN and a lobbyist representing ND Nurses Association: testified in opposition to the bill. (17:36) (See Testimony #3)

Rep. Muscha: Would the training be able to be done by the county nurse coming to the school?

Karen McDonald: That is an option. For very small schools my belief is the parent could give the required education if approved by the school board. Larger schools would have the advantage of having a school nurse to be involved in the training.

Chairman Weisz: Closed hearing.

2013 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

HB 1276
January 23, 2013
17640

☐ Conference Committee

Jocelyn Gallagher

Explanation or reason for introduction of bill/resolution:
Relating to medication administration in primary and secondary public schools and exemptions from the Nurse Practices Act.

Minutes: Attached Testimony 1,2,3

Chairman Weisz: Opened HB 1276

Rep. Porter: Had hearing on 1276 to deal with medication administration situation in schools across ND. Dr. Kalanek, State board of Nursing, was in support of the bill and had concerns with language written in the bill. The Nurses Association was opposed to the bill in its present form. I asked Dr. Martinson and Dr. Kalanek to come up with an amendment to the bill to do what they both felt was needed to get this moving forward. What you have in front of you is the amendment that came from their meeting. He referred to testimony by Nurses Association and this addresses their concerns they had also. (2:24) Will take any questions on this particular set of amendments.

Chairman Weisz: On subsection 2 the language seems a little stiff.

Rep. Porter: I think they wanted to be clear if they were hired as a licensed health care provider that they can't opt out but a teacher or classified staff member who is not can.

Rep. Muscha: The original one says administer but that probably has a whole different connotation because they're not a school. You are not really administering but you are providing.

Rep. Porter: You are administering, providing is administering. I am sure they thought that covered the whole scope of what they were doing.

Chairman Weisz: It is legal for a student to have his antibiotics with him and pop the pill on his own?

Rep. Porter: I think some schools have policies that say all medications must come through the office. It is a local decision and policy.

Rep. Silbernagel: Is the training then also a local decision as far as the necessary training to be adequately trained?

Rep. Porter: On page 2 of the mark-up and then on the bottom page 1, line 18 of the a amendment, it talks about a program established under section 15.1 19-23. So this puts it back into the school section of the code that says that there will be some sort of medication administration program that they will have to develop.

Rep. Fehr: This only relates to non-public schools and I was wondering why that change was made and what does it mean in terms of public schools?

Rep. Porter: The title part was an error; it does apply to all primary and secondary schools. By over striking public now it includes all schools. Line 12 is saying the board of a school district, Mandan as an example public school district takes care of Mandan public schools, the school board for St. Joe's Catholic school, the governing body of a non-public school take care of their own situation. It gives them both the ability to use this law.

Rep. Kiefert: How broad a spectrum of medications are we talking about, does this include everything?

Rep. Porter: As in my kid's school, if it is an Advil, they turn it into the office and go to the office to get it. It is the local school districts decision on how they handle that. This is just giving them a mechanism to do it and the ability for that teacher or school secretary if they are uncomfortable to opt out.

Rep. Fehr: Move that we adopt the amendment provided to us.

Chairman Weisz: Motion is second by Rep. Looysen

Chairman Weisz: Any further discussion on the amendment? IT is the amended adopted by the board of nursing and the school board association. All in favor, 13 yes, 0 no, amendment is adopted.

Rep. Hofstad: I move a do pass as amended.

Chairman Weisz: We have a motion by Rep. Hofstad, Rep. Silbernagel second.
13-0 do pass, Rep. Mooney will carry.

13.8211.01001
Title.02000

Adopted by the Human Services Committee

January 24, 2013

1/24/13

TD

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1276

Page 1, line 1, replace "a new section to chapter 15.1-19" with "section 15.1-19-23"

Page 1, line 3, remove "public"

Page 1, line 3, remove "nurse practices"

Page 1, line 4, replace "act" with "Nurse Practices Act"

Page 1, line 6, replace "A new section to chapter 15.1-19" with "Section 15.1-19-23"

Page 1, line 8, replace "**Administration of medication**" with "**15.1-19-23. Medication program - Establishment**"

Page 1, line 8, after "**Liability**" insert "**- Immunity from liability**"

Page 1, line 9, remove "A teacher or classified staff member who is not employed as a school nurse or"

Page 1, replace lines 10 and 11 with "The board of a school district or the governing body of a nonpublic school may establish a program for providing medication to students that includes authorizing individuals to provide medication to a student if the individual has received education and training in medication administration and has received written consent of the student's parent or guardian.

2. A teacher or classified staff member, who is not employed as a licensed health care provider to provide medication, may choose to not provide medication under the program established under subsection 1."

Page 1, line 12, replace "2." with "3."

Page 1, line 12, replace "administer" with "provide"

Page 1, line 12, replace "by section 43-12.1-04" with "under subsection 1, or a school district, the board of a school district, or the governing body of a nonpublic school that establishes a program for providing medication to students"

Page 1, line 14, replace "administering" with "providing"

Page 1, line 18, after "school" insert "under a program established under section 15.1-19-23"

Renumber accordingly

Date: 1-23-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1276

House Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Fehr Seconded By Rep. Looysen

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ			REP. MOONEY		
VICE-CHAIRMAN HOFSTAD			REP. MUSCHA		
REP. ANDERSON			REP. OVERSEN		
REP. DAMSCHEN					
REP. FEHR					
REP. KIEFERT					
REP. LANING					
REP. LOOYSEN					
REP. PORTER					
REP. SILBERNAGEL					

Total (Yes) No

Absent

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

move amendment to be adopted by the Board of Nursing and School Association.

Voice Vote Motion Carried

Date: 1-23-13
Roll Call Vote #: 2

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1276

House Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Hofstad Seconded By Rep. Silbernagel

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ	✓		REP. MOONEY	✓	
VICE-CHAIRMAN HOFSTAD	✓		REP. MUSCHA	✓	
REP. ANDERSON	✓		REP. OVERSEN	✓	
REP. DAMSCHEN	✓				
REP. FEHR	✓				
REP. KIEFERT	✓				
REP. LANING	✓				
REP. LOOYSEN	✓				
REP. PORTER	✓				
REP. SILBERNAGEL	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Rep. Mooney

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1276: Human Services Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1276 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "a new section to chapter 15.1-19" with "section 15.1-19-23"

Page 1, line 3, remove "public"

Page 1, line 3, remove "nurse practices"

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Page 1, line 14, replace "administering" with "providing"

Page 1, line 18, after "school" insert "under a program established under section 15.1-19-23"

Renumber accordingly

2013 SENATE HUMAN SERVICES

HB 1276

2013 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

Engrossed HB 1276
3/18/2013
20056

☐ Conference Committee

Committee Clerk Signature	

Explanation or reason for introduction of bill/resolution:

Relating to medication administration in primary or secondary public schools and exemptions from the nurse practices act.

Minutes: See attached testimony

Chairwoman J. Lee Opens the public hearing on Engrossed HB 1276

Rep. Porter, introduces the HB 1276 to the committee. Engrossed HB 1276 was asked for by ND School Board Association. The premise of the bill is to deal with administration of medications in the school, by unlicensed individuals. Chairwoman J Lee asks about the provision in section 2 of Engrossed HB 1276.

Jon Martinson with the North Dakota School Board Association. Testifies in favor of Engrossed HB 1276. **See attached Testimony #1 Chairwoman J. lee** asked about training and education. **Senator Larsen** asks about grade level one could take care of their own medication needs. **Senator Anderson**, discusses about policies that Department of Public Instruction (DPI) about administrating medications, and why the change on how we administrate medications now.

Karen McDonald lobbyist for the ND Nurses Association: Favors Engrossed HB 1276 as amended. The bill gives a statuary reference for who is responsible. Ms. McDonald explains the Nurses practice act.

Dr. Constance B. Kalanek executive director for the ND board of nursing. Testifies in favor of HB 1276 as amended. The board of nursing does support Engrossed HB 1276. The boards has worked with schools administrators to safely and effectively as possible provide medications to the students. **Chairwoman J lee** asks about how the rules would be developed.

Kirsten Baesler state supernatant of North Dakota Public Instruction: testifies in favor of Engrossed HB 1276 as amended. We are asking for is the ability for local districts to determine what they need to provide. School boards are always cognizant of their liability, and air of caution. I believe we should trust these elected officials to create the training that

will be necessary in their districts, I don't think that it should be required of our teachers and support staff in a local school district that has the minimal requirement at that point of their service to be required to receive training when the need is not there at that point, when the needs change I believe our local school boards have the authority to react quickly and effectively. I believe that we do need to work with local providers within their local community helping the training, and policy.

Dakota Draper representing the North Dakota Education Association (NDEA) testifies in Favor of Engrossed HB 1276. **See attached testimony #2**

Darleen Bartz Health Resources Section Chief for the North Dakota Department of Health. Testified neutral for Engrossed HB 1276. Proposed amendments to the engrossed HB 1276. There is a discussion about to whom the proposed amendments were sent to. . **Senator Larson** asked how many nurses are working in the schools. **Senator Anderson** asks about supervision entail.

Jon Martinson: comments about the proposed amendments. **Chairman J. Lee** discusses about the exemption from the nurses registry. **Senator Anderson**: asks about the volunteer and teachers. **Senator Dever**: who is a classified staff member? **Chairwoman J. Lee** talks about taking care of students with special needs in the education setting. There is a discussion about parenteral. There is a discussion about having a nurse in every school.

J. lee closes public hearing on Engrossed HB 1276

2013 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

Engrossed HB 1276
3/18/13
20098

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

"Click here to type reason for introduction of bill/resolution"

Minutes:

Committee Work

Chairwoman J. lee opens the committee discussion on Engrossed HB 1276

Senator Anderson: talks about Darleen testifying.

Senator Anderson motions to adopt Amendment

Senator Larsen Seconds

Senator Axness supports the amendment, when the school board if this would create additional problems for them they couldn't come up with one.

Chairwoman J. Lee talks about liability.

Senator Dever: talks about training and education.

Adopt Amendment 5-0-0

Senator Anderson motions for a Do Pass as Amended

Senator Larsen seconds

Senator Anderson comments: I get tired of legislator adopting rules for the good of the people and then the state coming to us, and then we need exemption because it's cheaper. But we tell the rest of the people but you can't have exemption it's cheaper or not, and I get tired of that, but I am not opposed to the bill.

Do Pass as Amended 5-0-0

Senator Anderson will carry

13.8211.02001
Title.03000

Adopted by the Human Services Committee

March 18, 2013

3/19/13

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1276

Page 1, line 1, replace "section" with "sections"

Page 1, line 1, after "15.1-19-23" insert ", and 23-44-03"

Page 1, line 3, replace "and" with a comma

Page 1, line 3, after "Act" insert ", and the exemption of medication administration in primary or secondary schools from the nurse aide registry"

Page 1, after line 22, insert:

"**SECTION 2.** Section 23-44-03 of the North Dakota Century Code is created and enacted as follows:

23-44-03. Exemption.

Medication administration by an individual within a primary or secondary school under a program established under section 15.1-19-23 is exempt from the requirements of this chapter, if the individual has received education and training in medication administration and has received written consent of the student's parents or guardian."

Renumber accordingly

Date: 3-18-13
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. _____

Senate Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 13.8211.02001 Title 03000

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Sen. Anderson Seconded By Sen. larsen

Senators	Yes	No	Senator	Yes	No
Chariman Judy Lee	✓		Senator Tyler Axness	✓	
Vice Chairman Oley Larsen	✓				
Senator Dick Dever	✓				
Senator Howard Anderson, Jr.	✓				

Total (Yes) 5 No 0

Absent

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Date: 3-18
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1276

Senate Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Sen. Anderson Seconded By Sen. larsen

Senators	Yes	No	Senator	Yes	No
Chariman Judy Lee	✓		Senator Tyler Axness	✓	
Vice Chairman Oley Larsen	✓				
Senator Dick Dever	✓				
Senator Howard Anderson, Jr.	✓				

Total (Yes) 5 No 0

Absent

Floor Assignment Sen. Anderson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1276, as engrossed: Human Services Committee (Sen. J. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1276 was placed on the Sixth order on the calendar.

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Renumber accordingly

2013 TESTIMONY

HB 1276

TESTIMONY OF DAKOTA DRAPER,
NORTH DAKOTA EDUCATION ASSOCIATION
HB 1276
January 22, 2013

Chairman Weisz and members of the House Human Services Committee:

My name is Dakota Draper and I'm here representing North Dakota Education Association (NDEA). I stand in favor to HB 1276.

As educators we are committed to doing all that we can to help ensure the safety of North Dakota students and the people who work in schools. Because in many districts student medical needs have become more common and labor intensive, teachers and classified employees are being asked to perform medical procedures that they are not trained for and are not comfortable with. Along with NDEA's testimony, I am submitting the testimony of a member that could not be here today, Audrey Haskell from Grand Forks. Her testimony details such an experience she had caring for a student with a feeding tube. This legislation will prevent others from having to perform a procedure that they are ill-trained for and are uncomfortable doing.

What this bill does for teachers is threefold: First, it gives teachers and classified employees the liability protection they need to dispense medication to students who need it. Second, for those that choose to take on this important task, it provides training that they need to dispense the medication correctly. Finally, it gives teachers and classified employees the ability to "opt out" of performing such a task that they may be uncomfortable with.

Thank you for the opportunity to address this important topic on the behalf of the members of NDEA. I am available for any questions from the committee.

Testimony of Audrey Haskell
20 year school employee at Lewis & Clark Elementary School
Contact address and phone:
806 S. 10th St., Grand Forks, ND 58201
(701- 739-1210)

I had only been a special education para for two years when I was asked to take an additional summer school Para-professional assignment working with severely medically challenged students. Having up until now only worked with students with various learning challenges, I was willing to give it a try. I was assigned to a fourteen year old boy we'll call Josh who was blind, deaf and had to be transferred in and out of a wheelchair to be diapered and use therapy equipment. All his food came in pre-measured bags and had to be hooked to a feeding port on the side of his stomach.

During the first day, I was showed how to transfer Josh the safest way possible for both of us. He was sti a growing 14 yr. old with the added danger of muscle spasms that meant flying feet and flailing arms and elbows. We went through the diapering process and I was showed how to open the feeding bags without letting it squirt all over before securing it to the port and disconnect to clean it when empty. Training was done.

Day two started with being nervous about the things I knew would be my responsibility for Josh. To my delight, it all went well and on the way home decided it was going to be fine for the rest of the six week assignment.

Day three was a different story. The morning passed without incident and as lunchtime got closer, I wasr nearly as apprehensive as the day before. As the rest of the staff was scurrying around preparing to get the other students fed, I found myself alone in the room with Josh. I warmed Josh's lunch bag a bit like I was shown and pulled the plug to attach it to the tube port. With one hand on the port and the other on the bag attachment, Josh spasms. His elbow hit my shoulder knocking the bag from my hand and squirting the sticky brown sauce all over both of us. To my horror, I realized that my other hand still held the end of the port that instead of protruding an inch out of the hole in Josh's side, was now hanging abou five inches down.

I had no idea what to do; I convinced that I was causing irreparable damage and hurting Josh and he couldn't even tell me. I was afraid to let go on either one so started yelling for help. After what felt like hours, the supervisor burst into the room to see what all the noise was about. She quickly explained what happened and in one fluid motion, the supervisor took the port attachment, grabbed the chunk of skin around the hole in Josh's side and inserted the port back into its place somewhere inside Josh's stomach She then unhooked the bag of food from the stand, turned it upside down and bent the end to stop the sti dripping liquid while stating, "I suppose I should have showed you this part."

As hard as I tried to remain calm and professional, after I helped get Josh cleaned up and changed, I four the nearest restroom to wipe as much as I could off myself and shed tears of frustration and relief that I h not hurt poor Josh.

No one should ever have to feel that helpless simply because of inadequate training. With the proper training and viable professional development, school employees can be at least a little more prepared to meet medical needs of students when no nurse is available.

When most of the procedures pertaining to the care of students with medical challenges were written, many of the most severe cases didn't attend public schools full time if at all. Those students weren't included in regular education classrooms and had their needs met at home or in a clinical setting. The medical needs of students have changed but the time in each school allotted for nurses and proper training of school employees has not. The same people that once were solely responsible for meeting the educational needs of students are now the ones being required to also meet medical needs. Educators are expected to change catheter, monitor blood sugar levels and determine proper insulin dosages, prepare and hook up feeding tube lines and insert a suppository into a student in the midst of a seizure. Then there are the more common procedures of administering a variety of medications every day, nebulizers, epipens and inhalers all plus know how to stop a bloody nose and immobilize a possible broken arm until parents can be found.

The scary part of all this is that there is no mandated safety or basic first aid requirements for most education employees and only a selection few job categories are offered the certification classes. Every person that works in a school setting should receive and maintain every year, the American Red Cross Basic First Aid and CPR Certificate at no cost to the employees as part of their professional development requirement.

Someone has to be responsible for these student's needs - we know that - but whom? School employees have to be properly trained by professionals qualified to do that training, not by the student's parents. Oh, parents should be part of the training process because who best can five advice on how to best care for their child but by no means should they be the sole source of training. Only after proper training and periodic refresher sessions should the trainers and parents sign consent for the school employee to perform procedures that not long ago could only be done in a clinical setting.

On the other hand, the school employees must be allowed to opt out of the responsibility without fear of retaliation. Staff should not be threatened into accepting duties or told that if they want a job, they will. In some districts, employees have submitted written notice that they are performing these medical procedures simply because they are required to as part of the "other duties as assigned" portion of their job description and asking that it be part of their file. The liability scare is a gray area with employees knowing full well that parents that want to sue if something happens will go after the district, that's where the money is but the employee still could at the very least lose their job if not much more.

Educators are being asked to wear many hats in schools that often reach far beyond everyday learning but we are not nurses. Just as we wouldn't ask an architect to fix a car, we shouldn't ask an educator to perform medical procedures.

Thank you for your consideration of HB1276 and help school employees do what we are really trained to do.

Audrey Haskell
806 S. 10th St.
Grand Forks, ND 58201
(701) 739-1210
Lewis & Clark Elementary School Employee

House Human Services Committee

North Dakota Board of Nursing

HB 1276 Relating to Medication administration in schools and an exemption to NDCC 43-12.1 -04 Nurse Practices Act

Chairman Weisz, Vice Chairman Hofstad and members of the Committee. I am Dr. Constance Kalanek RN, Executive Director of the North Dakota Board of Nursing.

Thank you for the opportunity to provide information regarding the HB 1276 related to medication administration in schools.

The Board of Nursing:

1. Licenses approximately:
   - 12, 047 Registered Nurses (RN)
   - 3,494 Licensed Practical Nurses (LPN)
   - 898 Advanced Practice Nurses (APRN)
   - 528 APRNs with Prescriptive Authority
   - 520 Unlicensed Assistive Personnel (UAP) and Technicians
2. Is a nine member board appointed by the governor.
3. Is a member of the Nurse Licensure Compact which encompasses 24 states.

The Board of Nursing supports HB 1276 Medication Administration in primary or secondary schools. With that being said, the Board would like to offer the following information:

- Historically, medication administration in the schools has been supported by the Board of Nursing. Over the years the Board has worked with the North Dakota School Nurse Organization (NDSNO), North Dakota Department of Health, and North Dakota Department of Public Instruction on the delivery of medication in the school setting.
- The Frequently Asked questions and answers is attached for your information and is also available on the website at www.ndbon.org.

Interpretation of language in HB 1276

In Section 2 of the Bill, a new exemption is proposed for section 43-12.1-04, subsection 9, of the Nurse Practices Act. In essence, the new exemption would allow individuals meeting the guidelines established by the proposed language to provide medications, other than by the parenteral route, without becoming licensed or registered by the Board of Nursing. I understand that the Board of Nursing does not object to this new exemption, and I do not have any concerns with regard to the proposed language.

In Section 1 of the Bill, reference is made to individuals who "choose not to administer medication under section 43-12.1-04" and to individuals "authorized to administer medication by 43-12.1-04". That language implies that section 43-12.1-04, subsection 9, authorizes individuals to administer medications. However, I do not believe that section 43-12.1-04, subsection 9, by itself authorizes persons to administer medications; instead, I believe that subsection 9 simply allows individuals who are already authorized to administer medications to do so without becoming licensed or registered by the Board of Nursing. Accordingly, I think that other provisions of chapter 15.1-19 need to give the applicable persons authority to administer medications. The proposed language in Section 1 could then reference individuals who have authority to administer medications <u>and</u> who are exempt under section 43-12.1-04, subsection 9. I do not have any other concerns with Section 1.

Please let me know if you have any questions.

Brian Bergeson

Special Assistant Attorney General

Thank you for your attention. I am now open for questions.

SCHOOL NURSING
QUESTIONS AND ANSWERS

Below are examples of questions/scenarios that school nurses are faced with everyday. *The questions and responses were a joint effort among the North Dakota Board of Nursing, the North Dakota School Nurse Organization (NDSNO), North Dakota Department of Health, and North Dakota Department of Public Instruction.*

1. Who is responsible for assigning the task of medication administration and/or individual health care services in the school setting?
The school administrator is responsible for assignments within the school setting. The child's parent, legal guardian, or surrogate has given signed permission to the school to provide requested medication administration and /or individual health care services.

2. Who supervises medication administration in school and assesses individual competency?
The authority for school staff to administer medications is a relationship between the school and the authorizing parent, legal guardian, or surrogate and not with the registered nurse. The accountability for safe and effective medication administration is with the school administrator. Nurses administering medication in the school are accountable to the Nurse Practices Act.

3. If a school nurse is present in a school building where medication administration or individual health care services have been assigned to someone other than the nurse, can the nurse provide training/education to the school staff on safe practices?
Yes. The nurse may provide training/education to an individual who will provide medications and/or health care services in the schools. The nurse may act as a consultant to that person but does not actually delegate or retain accountability of the function.

Is this then considered delegation/supervision and would the school nurse be liable if an error occurs?
No. This is not considered delegation according to the North Dakota Nurse Practices Act (NDCC Chapter 43-12.1) or the administrative rules (NDAC Chapter 54-05-04).

4. What liability exists for the school nurse if a health problem with a student arises and the nurse has not been involved in the plan of care?
The school nurse is required to follow standard emergency procedures. The child's parent, legal guardian, or surrogate is ultimately responsible for notifying the school of a health concern (i.e. medication administration and/or individual health care services.) The school nurse is not liable for relying or acting upon any incorrect or incomplete information provided by the school, parent, legal guardian, or surrogate.

5. A child's 504 plan or IHCP (Individual Health Care Plan) required the child to receive Glucagon for hypoglycemia. There is a school nurse present in the school, but only on a limited time basis. The school nurse is called in to consult on this issue.
An Individual Health Care Plan must be developed by the parent and school administrator. The school nurse may be involved in the development of the IHCP at which time education may be a component of the plan. Glucagon for injection is not used in the stable predictable situation. Emergency care procedures must be in place and implemented.

Approved: 03/03
Reviewed/Revised: 10/12

#3

House Bill 1276

January 22, 2013

Chairman Weisz, Members of the House Human Services Committee

My name is Karen Macdonald, I am a Registered Nurse and a member of the North Dakota Nurses Association. I am a registered lobbyist, representing the association.

I appear in opposition to HB 1276. Our legislative platform provides for support for legislation enhancing access to care, affordability of care and quality of care.

The bill as written would be opposed by the North Dakota Nurses Association for the following reasons:

1. The exemption to be included in 43-12.1-04 subsection 9 does not include any statutory reference as to who would have oversight (subsection 9 a. thru f. all include a statutory reference or a reference to some entity that would have oversight).
2. Lines 12-15 are poorly worded. NDCC 43-12.1-04 does not "authorize" anyone to administer medications; it states persons "who provide medications" are exempt from the provisions of the chapter.

We do understand that administration of medications within the K-12 school systems is becoming more complex and creates problems for school administration. Not every school has access to a registered nurse to develop and implement a safe program for delegation of medication administration to staff. We understand that there are persons who do not want to administer medications to children, nor should they unless they accept the responsibility as well as undergo the necessary training.

What one does with their own children, their own relatives does not need to come under legislative scrutiny, but what one is asked to do or agrees to do for non-related children should. This practice will go on, but can it be improved under the language of this bill? Not unless the practice can be included under someone's purview. There is a saying - "Let George do it." This practice is too important to leave it to just anyone.

We are proposing the bill be amended as follows:

1. NDCC Chapter 15.1-19 is entitled "School Safety" and includes language regarding many aspects of what a school does to keep children safe – establishment of safety patrols, why students may use inhalers in school, etc. This is a good place to locate language regarding administration of medications in schools.
2. Included in that section can be the concerns regarding teachers or classified staff who want to opt out of the practice.
3. The section can also include the civil/criminal liability statute.
4. The exemption sought in this bill can be amended to include a reference to NDCC 15.1-19 – this will mirror all of the other exemptions in NDCC 43-12.1-04 subsection 9.

43-12.1-04. Persons exempt from provisions of chapter.
This chapter does not apply to a person that is not licensed or registered under this chapter and is:
1. A person that performs nursing interventions in cases of emergency or disaster.
2. A student practicing nursing as a part of an in-state board-approved nursing education program.
3. A licensed nurse of another state who is in good standing and who is employed in this state by the United States government or any of its bureaus, divisions, or agencies.
4. A nurse licensed by another state or Canada, whose employment requires the nurse to accompany and care for a patient in transit for health care.
5. A nurse licensed by another state whose employment by a resident of that state requires the nurse to accompany and care for the resident in North Dakota.
6. An individual who performs nursing tasks for a family member.
7. A person that renders assistance pursuant to chapter 23-27.
8. A person licensed or registered under another chapter of this title and carrying out the therapy or practice for which the person is licensed or registered.
9. A person that provides medications, other than by the parenteral route:
a. Within a correctional facility, in compliance with section 12-44.1-29;
b. Within a psychiatric residential treatment facility for children licensed under chapter 25-03.2 and North Dakota Administrative Code chapter 75-03-17;
c. Within a treatment or care center for developmentally disabled persons licensed under chapter 25-16;
d. Within a group home, a residential child care facility, or an adult foster care facility licensed under section 50-11-01 or North Dakota Administrative Code chapter 75-03-16;
e. Within the developmental center at westwood park, Grafton, to the extent the individual who provides medications is a direct training technician or a vocational training technician as approved by the department of human services; or
f. Within a human service center licensed under chapter 50-06.
10. A nurse currently licensed to practice nursing by another jurisdiction:
a. Whose practice in another state requires that nurse to attend orientation, meetings, or continuing education in North Dakota;
b. Who serves as a guest lecturer or short-term consultant; or
c. Who provides evaluation undertaken on behalf of an accrediting organization.
11. An individual, including a feeding assistant, performing nonhands-on tasks while employed in a medicare-funded organization.
12. A student practicing nursing as part of an out-of-state board-recognized nursing education program, upon written notification to the board and contingent upon clinical site availability.
13. An individual who is registered on the state department of health nurse aide registry, including a certified nurse aide, home health aide, nurse aide, and medication assistant.

Suggestions for revision of HB 1276 – medication administration in the school systems.

Section 1. A new section to chapter 15.1-19 of the NDCC is created and reenacted as follows:

School Medication Administration – Program –Liability.

1. The board of a school district or the governing body of a non-public school may authorize administration of medications to students by establishing a program within the school system that includes the required parental authorizations, employee training and safeguards necessary to the program implementation.
2. A teacher or classified staff member who is not employed as a school nurse or physician to administer medication may choose to not administer medications to students.
3. An individual authorized to administer medications is not civilly or criminally liable for any act or omission of that individual when acting in good faith while administering medication to a student except when the conduct amounts to gross negligence.

Further – rewrite lines 18-20 as follows:

(Stem of #9. A person who provides medications, other than the parenteral route:)

Within a primary or secondary school if the individual has received education and training in medication administration under NDCC 15.1-19 and has received written consent of the student's parent or guardian.

Karen Macdonald, Lobbyist for the North Dakota Nurses Association

Monday, March 18, 2013
Senate Human Services Committee
Red River Room
10:30 a.m.

HB1276

Chairman Lee and Members of the Human Services Committee:

I am Jon Martinson with the North Dakota School Boards Association. This bill is introduced on behalf of the North Dakota School Boards Association, the North Dakota Education Association, and the North Dakota Council of Educational Leaders.

Every day, school personnel dispense medication to children at the request of their parents. This practice has gone on for years. Yet these individuals receive no training and are not exempt from liability.

This bill will do three things:

1. Requires education and training in medication administration for those providing medication in schools under policy that establishes a program for providing medication to students.
2. Provides an "opt out" provision for teachers or classified staff members who chose not to provide medication.
3. Provides an exemption from the nurse practices act for those individuals willing to provide medication to students provided they receive training, and act in good faith, and have written consent from the student's parent or guardian.

Training will be provided in administrative rules by the ND Department of Public Instruction.

Let me anticipate objections or an amendment from the ND Department of Health:

1. They have indicated to us that school personnel who administer medication should be trained to a level of certified nurse aide, home health aide, nurse aid, or medication assistant. We have NO interest in that level of training.

2. We are not seeking an exception to the Nurse Aid Registry. As defined in section 23-44-01 (subsection 6): "Nurse aid registry" means a listing of individuals who the department has determined have successfully completed the requirements established by the department to be designated as certified nurse aide, home health aide, nurse aid, or medication assistant ... **because there is ALREADY an exemption:**

Century Code: 23-44-02 (2) states:

> The health council shall adopt rules to regulate and register an individual who receives compensation for engaging in the provision of nursing or nursing-related services to an individual in a health care facility or other setting. The rules do not apply to a licensed health care professional practicing within the scope of that profession, an unlicensed assistive person under chapter 43-12.1, or a volunteer in the course of providing services without pay. In developing the rules, the health council shall consult with the state board of nursing and other key stakeholders.

Individuals who provide medication in the school setting do not receive compensation for providing medication and would therefore fall under the exemption.

If an individual in a school setting is already on the nurse aid registry, this individual would simply need to opt-out under provisions of the bill because more strict provisions apply to them because of their status on the registry.

2

TESTIMONY OF DAKOTA DRAPER,
NORTH DAKOTA EDUCATION ASSOCIATION
HB 1276
MARCH 17, 2013

Chairman Lee and members of the Senate Human Services Committee:

My names is Dakota Draper and I'm here representing the North Dakota Education Association (NDEA). I stand in favor of HB 1276.

As educators we are committed to doing all we can to help ensure the safety of North Dakota students and the people who work in schools. Because in many districts student medical needs have become more common and labor intensive, teachers and classified employees are being asked to perform medical procedures that they are not trained for and are not comfortable with performing. What this bill does for teachers is threefold: First, it gives teachers and classified employees the liability protection they need to dispense medication to students who need it. Second, for those that choose to take on this important task, it provides training that they need to dispense the medication correctly. Finally, it gives teachers and classified employees the ability to "opt out" of performing a task that they may be uncomfortable with.

Along with NDEA's testimony, I am submitting the testimony of a member that could not be here today, Audrey Haskell from Grand Forks. Her testimony details an experience she had caring for a student with a feeding tube. This legislation will prevent others from having to perform such a procedure.

Thank you for the opportunity to address this important issue on the behalf of the members of NDEA. I am available for any questions from the committee.

2

Good morning,

My name is Audrey and I've been an administrative assistant in the GFPS district for almost 16 years. Before that I was a special ed. Para in a self-contained resource room with students with emotional disabilities and worked with physically challenged students during summer school. I'm only telling you about my experience in the public schools as background information for the rest of my testimony.

During one of my first summers in the district, I was working with a young man who was non-verbal, blind, wheel chair bound and on a feeding tube. During the first few days, I was shown how to meet his needs; diapering, transferring to and from the wheelchair, and the feeding tube. I watched studiously to make sure I memorized every step of the demonstration because I knew it would be one of the few times I would see the process from start to finish before I was expected to do it myself. The first day went well although I was pretty shaky and no one even peaked in to check to see if I was doing OK. The following day was a whole different story. Just as I was getting his bag of pureed lunch sifted and started to hook the tube into the attachment that protruded out of his side, he spasmed. His arms flew in all directions knocking the stand over sending the sticky mess sailing wherever the tube whipped. I had been in the process of securing the tube into the stint and when he jerked and jumped, he knocked my arm and I heard a sucking sound. To my horror, the end of the stint that is supposed to be inside this young man's side was now dangling three inches outside his stomach. I had no idea if I was hurting him or what kind of damage I had done to his inside hookups. I called for help as I was trying to contain the stream of food that was still squirting all over me and my charge. Finally, my supervising teacher can into the room to see what all the commotion was about. I was trying to stay calm and at the same time explain what had happened thinking she needed those details. She very calmly took the end of the tube from my clenched fingers and gently pushed the excess tubing and stint attachment back into its proper place in his side all the while saying, "I guess I should have showed you this part, it sometimes freaks people out the first time it happens." All I could do was mumble something about needing to go wash up and once I was safely locked away from everyone else, I started to shake, cried a bit, and then I got angry. I promised myself that I would do everything in my power to never feel that helpless again and find out how I could make sure others never would either. I started looking for outlets of viable trainings for classified employees and professional development offerings that would empower paraprofessional, secretaries and other school employees to be as prepared as they could be in our jobs.

Audrey Haskell
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Testimony
House Bill 1276
Senate Human Services Committee
Health Resources Division
Monday, March 18, 2013; 10:30 a.m.
North Dakota Department of Health

Good morning, Chairman Lee and members of the committee. My name is Darleen Bartz, PhD, and I am the Health Resources Section Chief for the North Dakota Department of Health. I am here today to propose amendments to the engrossed House Bill 1276.

This bill relates to medication administration in primary or secondary schools and provides an exemption from the Nurse Practice Act. However, as written, this bill does not provide an exemption from the Department of Health's Nurse Aide Registry requirements, which includes medication assistants. The amendment that we propose would provide for that exemption.

Representatives from the Department of Health met with members of the School Board Association and other school representatives prior to the legislative session. The school representatives were given information about requirements for registration as a medication assistant on the Department of Health's Nurse Aide Registry, including the requirement to be under the supervision of a licensed nurse to perform delegated medication administration.

The individuals representing the schools indicated that was not the model for medication administration they intended to use in the school systems, as nurses are not present in every school. However, an exemption to the Nurse Aide Registry was not included when the bill was introduced.

Without the exemption to the Nurse Aide Registry requirements, use of individuals in the school setting to provide nursing or nursing related services, including medication administration, may result in a liability risk for the school unless the individual performing this service is on the department's nurse aide registry and supervised by a nurse. Also, use of an individual who is on the department's registry without supervision of a licensed nurse would result in the individual being subject to a disciplinary action by the department and also may create a liability risk for the school, as the school would be employing someone to work outside their scope of delegated medication administration.

Guidance from the Department of Health's legal counsel was to add an exemption to the Nurse Aide Registry requirements for individuals administering medications in a primary or secondary school under a program established under section 15.1-19-23. A copy of the proposed amendments is attached.

That concludes my testimony. I would be happy to respond to any questions you may have.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1276

Page 1, line 1, replace "section" with "sections"

Page 1, line 1, after "15.1-19-23" insert ", 23-44-03"

Page 1, line 3, after "Act" insert " and the exemption of medication administration in primary or secondary schools from the Nurse Aide Registry"

Page 2, after line 4, insert:

"**SECTION 3.** Section 23-44-03 of the North Dakota Century Code is created and enacted as follows:

23-44-03. Exemption.

Medication administration by an individual within a primary or secondary school under a program established under section 15.1-19-23 is exempt from the requirements of this chapter, if the individual has received education and training in medication administration and has received written consent of the student's parents or guardian."