



MASN Testimony before the Governor's Commission on Patient Safety

11-17-04

Presented by Kathleen J. Williams, RN, Immediate Past President of the Michigan Association of School Nurses (MASN).

Governor's Commission on Patient Safety

We commend the committee for addressing these concerns.

On behalf of the Michigan Association of School Nurses (MASN), I appreciate the opportunity to share our concerns regarding the safety of children who receive health care services in the school setting. We have a membership of 186. There are about 450-500 school nurses in Michigan and about 523 public school districts and 239 charter schools. There are over 4000 public and private schools in Michigan. **MASN's position is that medical treatments and medication administration provided in schools is a health service and should be done by a qualified person supervised under the Public Health Code.**

Michigan Public Act 368 of 1978 (Public Health Code), Part 9101, mandates that the department (MDCH) shall establish a plan for health services for pupils in elementary and secondary schools of this state. The plan shall include a definition of school health services and standards for implementation. This plan has not been updated since the original 1980 plan. It is imperative that this plan be updated for the safety of students and liability of school districts & personnel.

Nurses are held accountable to the Public Health Code (PHC). Traditional school employees are guided by the School Code. At times, the Public Health Code and the School Code conflict with each other. There are federal laws that schools must comply with, such as IDEA, Section 504 of the Rehabilitation Act, and parts of the Americans with Disabilities Act (ADA). The definition in IDEA for “**school health services**” means **services provided by a qualified nurse or other qualified person.** For MASN, this clarifies the need for following the PHC related to providing health services in the schools.

The focus of current medication laws in the Michigan School Code is to reduce liability from individuals in the school district rather than to advocate for the safety of students. Medication laws that advocate for the safety of students would **require** training for school staff to administer medications.

School nurses work in a gray area trying to be accountable to both codes. We practice in a non-health setting, attempting to provide safe care. Many schools are without the services of a school

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nurse. We have been informed of children who are receiving care by untrained or inadequately trained personnel or volunteers without the supervision of a health care professional. **This places children's safety at risk; it also places school staff at risk for liability issues.**

School districts within the state of Michigan address the health and safety needs of children differently. Districts choose whether to employ school nurses to meet these needs resulting in unequal access to nursing services across districts.

Children with chronic illnesses, such as, asthma, severe allergies, diabetes, and seizures are at grave risk because schools that do not employ nurses often have no emergency plan that address their special needs. Furthermore, school staff are not being trained and supervised by a licensed professional to provide medications and treatments at school. Few primary care providers are initiating health plans for students with chronic illness, which leaves parents left trying to manage their child's illness at school without professional nursing support and coordination of care.

Children are coming to school with increasingly complex health conditions that often require treatment during the school day. Medication administration runs the gamut from the simple (administration of a pill) to the more complex (medication inhaled through a nebulizer) to the highly skilled (an injection such as glucagon that must be mixed and dosed according to weight). Requests and doctor's orders are increasing for the administration **of insulin and rectal Diastat (valium which is a controlled drug)**. Physical ease of medication administration is not the only consideration when evaluating who can be trained to do a task safely. Knowing how to quickly assess a student for medication needs and equally to know if the student is having the desired and timely effect from the administration requires professional training and experience. In other words, just because a person can give a drug it does not follow that they know what they are doing. In a health care setting, insulin administration requires a second nurse double-checking the dosage because a simple error can be life threatening. Most school staff giving medications, at best, have had three-to-four hour general medication training. **The Michigan Department of Education (MDE) recommends, but does not require, training.** Many school employees have not been trained at all. **This leaves serious potential for error.** Tests such as monitoring blood sugars, procedures such as catheterization, treatments such as tracheostomy care and tube feedings are all examples of possible requirements for students in preschool through 12. A student's needs can range from complete care by school personnel to stand by assistance for students learning to become independent. Some districts providing this care have no school nurse at all. Though many court rulings have backed the requirement for health services, some school administrators will still tell a parent that they have no one to provide these services. Some districts provide the care without written orders and/or written parental consent. Many districts use the *in loco parentis* as the way to get around the PHC. Personnel or parents from some school districts have contacted MASN for information and support for needed care in school. **Parents have the right for their children to be cared for safely during the school day. School staff should not have to worry about performing medical tasks that they are not qualified to do, adequately trained for or supervised to do.**

It is the legal responsibility of local/intermediate school boards and school administrators to provide for the health and safety of all students in the school setting. This includes the provision

of needed health care services by qualified staff. School administrators may need to be included in the decision making process as to which nursing acts might be delegated and to whom the delegation may be made. However, ultimately, it is the nurse who decides whether the delegation occurs and to which staff person the act can be delegated. Michigan Public Health Code Part 172 Nursing 333.17201, Delegation 333.16104, 333.16215 and Michigan Board of Nursing Rules regarding delegation 8338.0104, specifies that only the RN may delegate and supervise.

At home, the parent, as the primary care giver, is able to make all decisions regarding necessary health care for his/her child. It is vitally important for parents to be able to differentiate between their role as a care taker in the home and that of the school personnel employed by the school district to provide care for students. In the school setting, parents do not have the authority to make decisions regarding delegation, training or supervision. However, it is essential that the family, school nurse, school educational team and other health care providers work in collaboration to provide the highest quality of care for the student in an environment that is safe for all students and staff.

In summary, children are coming to school with increasingly complex health conditions that require treatment during the school day. There is a need to comply with federal laws requiring these services and court rulings that have backed the requirement for health services. Students deserve that health services that can be provided safely under the Public Health Code.

Recommendations for providing safe health services in the public and charter schools (not inclusive of school-based health centers):

- **Update and comply with Part 9101, of the Michigan Public Act 368 of 1978 Public Health Code, which mandates that the department (MDCH) shall establish a plan for health services for pupils in elementary and secondary schools of this state. The plan shall include a definition of school health services and standards for implementation.**
- **Use the definition of health services in the Individuals with Disabilities Education Act, (I.D.E.A.), as a minimum standard for the definition of health services provided in schools.** The definition in CF 300.16 for “school health services” means services provided by a qualified nurse or other qualified person.
- Include in this health service plan that medical treatments and medication administration provided in schools is a **health service** and should be done by a qualified person supervised under the Public Health Code.
- **Develop guidelines and standards** for the implementation of school health services through the Michigan Department of Community Health using group consensus from representatives from the Michigan Department of Community Health, Michigan Department of Education (MDE), Michigan Branch of the American Academy of Pediatrics and Michigan Association of School Nurses (MASN).

- **Implement guidelines and standards** of care for school health related services, such as, minimum standards for school health services, medications, management of chronic illnesses, confidentiality, delegation, health promotion, communicable diseases, school based health clinics, first aid/disaster response.
- Develop guidelines for implementation of these standards through the MDCH.
- Encourage congress to establish a budget item for a **health services consultant** at the state level to develop and implement the plan. This position can be shared between the MDCH and MDE as other states do, but needs to be filled by a licensed health professional able to provide health services in schools.
- Develop and implement criteria for:
 - reporting type
 - provider classification
 - accountability
 - evaluation
 of health services provided in schools to both the Michigan Department of Community Health and the Michigan Department of Education.
- Voluntary reporting of medical treatment and medication errors made when health services are provided to students in schools to the Michigan Department of Community Health and the Michigan Department of Education.

Health services that are delivered by qualified persons helps to identify problems early on and prevent medical errors. Furthermore, health care costs can be reduced when health problems are reported and early intervention can occur.

These suggestions may appear broad in scope and lacking in detail; however, this would be a sizable task for the first step at the state level since 1980 to implement quality standards of care for health services in school. MASN will be glad to have a representative work with the department to update the standards of care.

MASN has included some of the laws that affect health services in the school. They are listed below.

Thank you for the opportunity to provide testimony to this committee.

Sincerely,

Kathleen J. Williams, RN

Federal laws that require health services in schools include:

- 1) **IDEA-Individuals with Disabilities Education Act.** Children with chronic health conditions are protected to receive these related services under “otherwise health impaired.” Definitions of CF 300.16 for “school health services” means services provided by a qualified nurse or other qualified person.
- 2) **Section 504 of the Rehabilitation Act of 1973** as amended provides individuals with basic civil rights protection against discrimination. It provides related services, including health services (e.g. medication administration, treatments) to those not eligible for special education. Accommodation plans (including individual health care plans) are developed to provide needed health services in the school for children requiring medication or other health services. Each district must designate a 504 coordinator. 34 CFR 104.3(j)(2)(i) defines impairments, and 34 CFR 104.3(j)(2)(ii) defines major life activities.
- 3) **ADA-Americans with Disabilities Act.**

State laws:

As you know, the Michigan’s Public Health Code, (PHC) 1978 PA 368, as amended, under Article 7, Health Occupations, governs the scope and practice and regulation of licenses and registrants, including medicine, nursing, and osteopathy. It recognizes registered nurses as fully licensed health professionals.

- 1) Part 161 General provisions defines delegation and supervision.
333.16104 “Delegation” means an authorization granted by a licensee to a licensed or unlicensed individual to perform selected acts, tasks, or functions which fall within the scope of practice of the delegator and which are not within the scope of practice of the delegatee and which, in the absence of authorization, would constitute illegal practice of a licensed profession.
- 2) MCLA 333.16109(2)(c)-Public Health Code regarding supervision requires that the licensed supervising health professional provide predetermined procedures and drug protocol for the use of an individual whose work is overseen by the professional.
The licensee who delegates an act, task, or function must supervise the delegatee
- 3) The School Code Administrative Rule R340.1163. Pertains to function of school nurse.
Assess and evaluate health status; interpret medical evaluations; plan course of action to minimize or prevent health problems; intermediary to family, physician, and social agencies; initiate supplemental testing; develop in-services and school policies. MCLA 380.1252-states, “The board of a school district may employ registered nurses necessary to provide professional nursing services.”

Laws within the School Code and rules affecting medication administration in the school setting include:

1) MCLA 380.1178- (School Code) Sets forth legal provisions for the immunity of school employees against an allegation of “simple” negligence if the employee administers the medication under certain requirements, including being in the presence of another adult.

2) MCLA 380.1178 – The Revised School Code (EXCERPT), Act 451 Of 1976. Popular Name: Act 451. Am. 2000, Act 9, Imd.Eff.Mar.7, 2000. Administration of medication to pupil; liability; school employee as licensed registered professional nurse. If a school employee is a licensed registered professional nurse, subsection (1) applies to that school employee regardless of whether the medication is administered in the presence of another adult.

3) MCLA 380.1179 of 1976, Am 2004. The revised school code. Commonly known as Public Act 451 of 1976. Allows pupil to possess and use an inhaler and/or epinephrine auto-injector for emergency use with the written order and approval of the child’s physician and written permission of the parent/legal guardian. Sets forth legal provisions for the immunity of school employees.

4) MCLA 380.1178a of school code – PA 51 of 2002. Enrolled HB# 4672 of 2002. This legislation directed the Department of Education to review all existing guidelines, policies, and documents, and develop a model policy concerning the administration of medications at school. Direct links to Law - <http://www.michiganlegislature.org/documents/2001-2002/publicact/htm/2002-PA-0051.htm>

Model policy -

http://www.michigan.gov/documents/Medication_Policy_Nov_25_2002_51010_7.pdf

5) Michigan Law PA 51 of 2002 previously known as HB # 4672 of 2002. States intermediate and local school districts must review their medication policy with MDE model policy at an open board meeting by March 15, 2003.

6) Attorney General Opinion, No. 5679, April 11, 1980. A physician must delegate and supervise the act of medication administration if the school district does not employ a school nurse.

School nursing services include, but are not limited to:

- Developing policies and procedures/guidelines to provide a minimum standard of care for school health services
- Development, implementation and evaluation of care plans for students with known health conditions (required by IDEA and 504)
- Referrals for primary care, dental care, vision and hearing, community services
- Case management for chronic illnesses, such as asthma, diabetes, seizures, severe allergies

- Appropriate delegation and supervision of health services for children with special health care needs
- Identification and referral of children who are being abused and neglected
- Home visits to reach unreachable families
- Health promotion for students and families regarding nutrition, physical activity, safety
- Illness/injury assessments and care, including appropriate referrals
- Staff training regarding medication administration, first aid/disaster care, bloodborne infectious diseases
- Safe medication administration
- Safe medical/health treatments for students needing them during the school day
- Immunization monitoring and follow-up
- Communicable disease detection, reporting, and response
- Coordinate immediate access to health services at school, such as school based health clinics, mobile dental services
- Quality measurement of the safety of health services provided in school
- Assisting families with uninsured children to obtain health insurance coverage
- Facilitate School Health Councils