

STORAGE NAME: h0773.ei

DATE: February 28, 2000

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
EDUCATION INNOVATION  
ANALYSIS**

**BILL #:** HB 773

**RELATING TO:** School/Student's Medical Needs

**SPONSOR(S):** Representative Crow

**TIED BILL(S):** None

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) EDUCATION INNOVATION
  - (2) GOVERNMENTAL RULES & REGULATIONS
  - (3) EDUCATION APPROPRIATIONS
  - (4)
  - (5)
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**I. SUMMARY:**

HB 773 requires that:

- *Only* licensed medical personnel are allowed to make medical recommendations to the parent or legal guardian;
- A parent must provide a written statement *through his or her physician* to the principal granting permission for the administration of medication;
- A *nurse*, in addition to a principal and principal's designee may administer medication;
- The school board must adopt policies and procedures governing the administration of *nonprescription* medication by school district personnel;
- Written parental consent must be given for nonprescription medication administered by school district personnel;
- All in-school physical or mental examinations are prohibited unless they are approved in writing by the student's parent;
- When a student is ill or injured and must be taken home *under nonemergency circumstances* he or she may be transported in a privately owned vehicle; and,
- When a student is ill or injured and must be taken to a medical treatment facility under *imminently life-threatening* circumstances he or she may be transported in a privately owned vehicle.

The bill prohibits:

- A school administrator, teacher, guidance counselor, psychologist or any other staff member who does not have a *medical* degree from providing a medical diagnosis or giving a clinical test to any student;
- Nonmedical school personnel from presenting lessons or activities that could be defined as medical or psychological therapy;
- A parent from being coerced to seek medication or pursue specific medical or psychological diagnosis, psychotherapy, or other treatment for his or her child; and,
- Transportation of a student in a school district vehicle or a privately owned vehicle to a medical treatment facility without the consent of the parent except in imminently life-threatening circumstances, such as an accident involving serious physical injury.

HB 773 has no fiscal impact.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |   |                             |   |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 5. <u>Family Empowerment</u>      | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

**Administration of Medication by School District Personnel**

Section 232.46(1), F.S., provides that, notwithstanding the provisions of the Nurse Practice Act, school district personnel are authorized to assist students in the administration of prescription medication when the following conditions have been met:

- Each district school board *must* include in its approved school health services plan a procedure to provide training, by a registered nurse, a licensed practical nurse, a licensed physician, or a physician assistant pursuant to chapter 458 or chapter 459, to the school personnel designated by the principal.
- Each district school board *must* adopt policies and procedures governing the administration of prescription medication by school district personnel. The policies and procedures must include:
  - For each prescribed medication, the student's parent or guardian *must* provide to the school principal a written statement which must grant to the principal or the principal's designee permission to assist in the administration of such medication.
  - Each prescribed medication to be administered by school district personnel *must* be received, counted, and stored in its original container. When the medication is not in use, it must be stored in a safe place under lock and key.

Chapter 464, the Nurse Practices Act, differentiates between *professional* nursing, as practiced by a licensed *registered* nurse, and *practical* nursing, as practiced by a licensed *practical* nurse. According to the Department of Health (DOH), a *professional* nurse, by virtue of substantial specialized knowledge, judgment, and nursing skill based upon applied principles of psychological, biological, physical, and social sciences may perform at a higher level of nursing than a licensed *practical* nurse. A licensed *practical* nurse performs selected acts under the direction of a *registered* nurse, a licensed physician, a licensed osteopathic physician, a licensed podiatric physician or a licensed dentist. The *registered* nurse may supervise and teach other personnel in the theory and performance of nursing acts.

The "school health services plan" as defined in s. 381.0056, F.S., is the document that describes the services to be provided, the responsibility for provision of the services, the anticipated expenditures to provide the services, and evidence of cooperative planning by

local school districts and county health departments. According to the 1999-2001 School Health Services Plan, each school district is responsible for having a current school district medication policy for administration of prescribed and over-the-counter medication. Local control currently determines policy and procedures regarding prescription and non-prescription medication administration for students at school. According to the Florida Department of Health, in recent years, policies for nonprescription medication have become increasingly more controversial as more students present with over-the-counter homeopathic remedies that have not been prescribed by physicians and may not be standardized for purity and safety or proven to be efficacious.

Each district's School Health Services Plan also includes evidence of a curriculum and procedure to provide training by a licensed professional to the school personnel designated by the principal to administer medications, evidence of supervision and monitoring of all staff designated by the principal to administer medications, evidence of use of an individual student medication record, and evidence that medications are received, counted, and stored in it's original container and under lock and key when not in use. According to DOE, school-based individuals are trained in indicators of possible medical conditions, such as seizures, vision deficits, and attention problems. Currently, school personnel other than licensed medical personnel advise parents of suspected medical conditions that need further investigation by their physician or health care provider and medical problems are averted by this notification to parents.

Section 232.46(2), F.S., provides that there will be no liability for civil damages as an effect of the administration of such medication when the person administering acts as an ordinarily reasonably prudent person would have acted under the same or similar circumstances.

### **Provisions of Medical Services**

Section 232.465, F.S., provides that nonmedical school district personnel *must not* be allowed to perform invasive medical services that require special knowledge, nursing judgment, and nursing assessment. School based nonmedical personnel who administer prescribed medication must be trained by medical personnel. All procedures must be monitored periodically by the nurse. For all other invasive medical services, the appropriate qualified medical official must determine if nonmedical school district personnel will be allowed to perform such services. Each district school board *must* establish emergency procedures in accordance with the School Health Services Act in s. 381.0056(5), F.S., for life-threatening emergencies.

Section 232.46 and 232.465, F.S., includes provisions for licensed *practical* nurses to act in the capacity of *registered* nurses to:

- Provide training to school personnel designated by the principal to assist students in the administration of prescribed medication;
- Provide child-specific training to non-licensed personnel relative to performing selected nursing services; and
- Determine if non-licensed school district personnel shall be allowed to perform invasive medical services except for those listed in s. 232.465, F.S., which are: sterile catheterization, nasogastric tube feeding, cleaning and maintaining a tracheostomy and deep suctioning of a tracheostomy, cleaning intermittent catheterization, gastrostomy tube feeding, monitoring blood glucose, and administering emergency injectable medication.

Section 381.0056, F.S., requires school districts to conduct health screenings on all students. Currently, parents of all public school students are advised that this will be

provided for their children, and that they have the right to request these screening services not be given to their child. A parent may place service restrictions in their child's record such as in the case of religious beliefs. For the safety of students, individual screenings for suspected contagious diseases (such as conjunctivitis and head lice) are conducted by school personnel trained in symptoms of these diseases.

Section 230.23, F.S., requires districts to conduct evaluations of exceptional students. According to the Florida Department of Education (DOE), section 504 of the federal Rehabilitation Act of 1973 also requires evaluation of students to determine their eligibility for protection. Parent consent is required for the federal IDEA evaluations and reevaluations. Although not specifically required by federal law, according to DOE, districts usually follow IDEA requirements for parent consent for Section 504 evaluations.

Section 232.465, F.S., provides school district personnel *must* not refer students to or offer students at school facilities contraceptive services without the consent of the parent or guardian. However, if this provision conflicts with any provision in the general provisions for public health found in Chapter 381, the provisions of Chapter 381 control.

Currently, according to DOE, the school health curriculum provides lessons that guide students towards healthy lifestyles, both physically and emotionally. Students are currently provided with counseling services and behavioral skills training (anger management, conflict resolution) as part of each district's responsibility to provide student support services through the school counselor, school psychologist, school social worker and school nurse. In cases of emotional crisis (such as suicide threat) or imminent physical danger, trained staff provides immediate first aid and/or psychological counseling to preclude endangerment of the students. Once the crisis intervention has taken place, school personnel provide parents/guardians with referral information for both medical and psychological treatment when a student displays symptoms associated with physical and/or mental illness. Many student services professionals hold advanced degrees and training, being licensed or eligible for licensure under Chapters 490 and 491, F.S. Upon parent request, and within the parameters of training of the student services professional (psychologist, counselor, nurse, school social worker), psychological therapy may be provided.

According to DOE, student services personnel (nurses, counselors, psychologists and social workers) are approved Medicaid providers in the areas of behavioral health services.

According to the DOH, the provision of mental health and psychological testing is outside the scope of school health services staff.

### **Transportation of Ill or Injured Students or In An Emergency Situation**

Section 234.02, F.S., states that the maximum regard for safety and adequate protection of health are primary requirements that must be observed by school boards in routing buses, appointing drivers, and providing and operating equipment. School boards must use school buses as defined in 234.051, F.S., for all regular transportation. School boards may authorize the transportation of students in *privately owned motor vehicles* on a case-by-case basis in certain circumstances.

One circumstance is when a student is ill or injured and must be taken home or to a medical treatment facility under nonemergency circumstances; and the school has been unable to contact the parent or the parent is not available to provide the transportation; proper adult supervision is available at the destination; transportation is approved by

school authority; and the school continues to try to contact the parent if unable to contact the parent prior to the transportation until the school is able to notify the parent or guardian of the transportation and the relevant circumstances.

C. EFFECT OF PROPOSED CHANGES:

**Administration of Medication by School District Personnel**

HB 773 provides that *only* licensed medical personnel are allowed to make recommendations to the parent or legal guardian regarding the student's medical needs. This could pose limitations on schools since licensed medical persons are not always present on school campuses when needs arise. Additionally, parents will not have input from school personnel who spend time at school with their child.

The bill requires that for each child's prescribed medication, the parent must provide a written statement *through his or her physician* to the principal granting the principal, nurse, or principal's designee permission to assist in the administration of the medication. The written statement will be given by the parent to the physician, who will give it to the school principal. The language does not specify that the physician's order must be included with the parental written statement. According to the Department of Health (DOH), this provision could improve health services by directly involving the physician in the process of granting permission for school personnel to administer medications to students during the school day. A written physician statement to allow the principal or nurse to administer medication and explaining why this medication is required during the school day would be comparable to the orders that a physician writes for services in other clinical settings.

The bill requires the school board to adopt policies and procedures governing the administration of *nonprescription* medication by school district personnel. The policies and procedures must require written parental consent for nonprescription medication administered by school district personnel.

**Provisions of Medical Services**

HB 773 prohibits all in-school physical or mental examinations unless they are approved in writing by the student's parent. Physical and mental examinations are not defined and there is no provision for emergency medical and mental examination services in life-threatening circumstances to students when no consent is provided. Schools will not be able to provide routine health screenings and services to all students without written parental permission. According to the Department of Education, the health of students could be endangered if these services were discontinued.

The bill restricts a school administrator, teacher, guidance counselor, psychologist or any other staff member who does not have a medical degree from providing a medical diagnosis or giving a clinical test to any student. This restriction on medical diagnosis and clinical testing will restrict services provided by social workers, occupational and physical therapists, school psychologists, speech-language pathologists, and others who do not have a *medical* degree. Parents will be unable to request to have counselors, psychologists, or social workers provide services to students. According to the Department of Health, the stated restrictions "are not within the scope of practice of school health personnel and as such should not be included in the school health statute."

Nonmedical school personnel may not present lessons or activities that could be defined as medical or psychological therapy. Neither shall a parent be coerced to seek medication or pursue specific medical or psychological diagnosis, psychotherapy, or other treatment with respect to his or her child.

**Transportation of Ill or Injured Students or In An Emergency Situation**

HB 773 provides that when a student is ill or injured and must be taken home *under nonemergency circumstances* he or she may be transported in a privately owned vehicle. Additionally, when a student is ill or injured and must be taken to a medical treatment facility under *imminently life-threatening* circumstances he or she may be transported in a privately owned vehicle. Transportation of a student in a school district vehicle or a privately owned vehicle to a medical treatment facility without the consent of the parent is prohibited except in imminently life-threatening circumstances, such as an accident involving serious physical injury.

D. SECTION-BY-SECTION ANALYSIS:

**Section 1:** Amends s. 232.46, F.S., revising provisions relating to the administration of medication by school district personnel; authorizing only licensed medical personnel to make recommendations with regard to a student's medical needs; requiring that parent permission for school personnel to administer medications be provided through a physical; providing that school nurses be included in school personnel who may assist in the administration of medication; requiring district school boards to adopt policies and procedures governing the administration of nonprescription medication by school district personnel; requiring that those policies and procedures prohibit the administration of nonprescription medication by school district personnel without the written consent of the student's parent.

**Section 2:** Amends s. 232.465, F.S., prohibiting all in-school physical or mental examinations without written parental consent; prohibiting school administrators, teachers, guidance counselors, psychologists, or other staff members who do not possess a medical degree from providing a medical diagnosis or giving a clinical test to any student; prohibiting nonmedical school personnel from presenting lessons or activities that could be defined as medical or psychological therapy; prohibiting any parent from being coerced to seek medication or pursue specific medical or psychological diagnoses, psychotherapy, or other treatment with respect to his or her child.

**Section 3:** Amends 234.02, F.S., allowing transportation in a privately-owned vehicle of ill or injured students to their home under nonemergency circumstances and to a medical treatment facility under imminently life-threatening circumstances; prohibiting transportation of a student in a school district vehicle or a privately owned vehicle to a medical treatment facility for any purpose without parental consent except in imminently life-threatening circumstances, such as an accident involving serious physical injury.

**Section 4:** Provides an effective date of July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

If school districts have been using non-medical degreed staff to provide medical diagnoses or give clinical tests to students and choose to begin using staff with medical degrees for the same purpose, there could be a fiscal impact to the district or school.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to expend funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority of counties or municipalities to raise revenue.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentages of state tax shared with counties and municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

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B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

SB 1346 is similar to HB 773.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON EDUCATION INNOVATION:

Prepared by:

Staff Director:

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Ouida Ashworth

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