

State of Wisconsin



2009 Senate Bill 414

Date of enactment: **March 15, 2010**
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2009 WISCONSIN ACT 160

AN ACT *to renumber and amend* 118.29 (2) (a) 1.; *to amend* 115.001 (11), 115.88 (1), 115.88 (1m) (am), 115.88 (1m) (b), 118.29 (1) (a), 118.29 (2) (a) 2., 2r. and 3. and (b), 118.29 (4) and 118.29 (5); *to repeal and recreate* 118.29 (1) (b); and *to create* 118.29 (1) (bg), 118.29 (1) (dm), 118.29 (2) (a) 1. b. and 118.29 (6) of the statutes; **relating to:** school nurses and the administration of drugs to pupils and granting rule-making authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1m. 115.001 (11) of the statutes is amended to read:

115.001 (11) SCHOOL NURSE. "School nurse" means a registered nurse licensed under ~~ch. 441 s. 441.06~~ or in a party state, as defined in s. 441.50 (2) (j), who is also ~~certified by the department as being qualified to perform professional nursing services in a public school meets the qualifications for school nurses prescribed by the department by rule.~~

SECTION 3. 115.88 (1) of the statutes is amended to read:

115.88 (1) PERSONNEL. A school board, board of control of a cooperative educational service agency or, upon authorization of the county board, a county children with disabilities education board may employ, for a special education program, either full- or part-time licensed teachers, licensed coordinators of special education, ~~licensed~~ school nurses, licensed school social workers, licensed school psychologists, licensed school counselors, paraprofessionals, licensed consulting teachers to work with any teacher of regular education programs who has a child with a disability in a class and any other personnel approved by the department. The board may

contract with private or public agencies for physical or occupational therapy services on the basis of demonstrated need. A school board may contract with a charter school to provide special education services to pupils attending the charter school if the charter school is under contract with the school board under s. 118.40 (2m) and the charter school is not an instrumentality of the school district.

SECTION 4. 115.88 (1m) (am) of the statutes is amended to read:

115.88 (1m) (am) Subject to par. (b), if the operator of a charter school established under s. 118.40 (2r) operates a special education program and the state superintendent is satisfied that the operator of the charter school is complying with 20 USC 1400 to 1491o, the state superintendent shall certify to the department of administration in favor of the operator of the charter school a sum equal to the amount that the operator of the charter school expended during the previous school year for salaries of full-time or part-time licensed teachers, licensed coordinators of special education, ~~licensed~~ school nurses, licensed school social workers, licensed school psychologists, licensed school counselors, paraprofessionals, licensed consulting teachers to work with any teacher of regular education programs who has a child with a disability in a class and any other personnel, as determined

* Section 991.11, WISCONSIN STATUTES 2007-08 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

by the state superintendent, as costs eligible for reimbursement from the appropriation under s. 20.255 (2) (b). The state superintendent may audit costs under this paragraph and adjust reimbursement to cover only actual, eligible costs.

SECTION 5. 115.88 (1m) (b) of the statutes is amended to read:

115.88 (1m) (b) The department shall promulgate rules establishing the percentage of the salaries of licensed school nurses, licensed school social workers, licensed school psychologists, and licensed school counselors that may be certified under pars. (a) and (am) as costs eligible for reimbursement. For each category of personnel, the department shall base the percentage on the average percentage of work time that the category spends providing services to children with disabilities, including conducting evaluations under s. 115.782.

SECTION 6. 118.29 (1) (a) of the statutes is amended to read:

118.29 (1) (a) “Administer” means the direct application of a nonprescription drug product or prescription drug, whether by injection, ingestion or other means, to the human body.

SECTION 7. 118.29 (1) (b) of the statutes is repealed and recreated to read:

118.29 (1) (b) “Drug” means any substance recognized as a drug in the official U.S. pharmacopoeia and national formulary or official homeopathic pharmacopoeia of the United States or any supplement to either of them.

SECTION 8. 118.29 (1) (bg) of the statutes is created to read:

118.29 (1) (bg) “Drug product” means a specific drug or drugs in a specific dosage form and strength from a known source of manufacture.

SECTION 9. 118.29 (1) (dm) of the statutes is created to read:

118.29 (1) (dm) “Nonprescription drug product” means any nonnarcotic drug product which may be sold without a prescription order and which is prepackaged for use by consumers and labeled in accordance with the requirements of state and federal law.

SECTION 10. 118.29 (2) (a) 1. of the statutes is renumbered 118.29 (2) (a) 1. a. and amended to read:

118.29 (2) (a) 1. a. May Except as provided in subd. 1. b., may administer any nonprescription drug which may lawfully be sold over the counter without a prescription product to a pupil in compliance with the written instructions of the pupil’s parent or guardian if the pupil’s parent or guardian consents in writing, the nonprescription drug product is supplied by the pupil’s parent or guardian in the original manufacturer’s package, and the package lists the ingredients and recommended therapeutic dose in a legible format.

SECTION 11. 118.29 (2) (a) 1. b. of the statutes is created to read:

118.29 (2) (a) 1. b. May administer a nonprescription drug product to a pupil in a dosage other than the recommended therapeutic dose only if the request to do so is accompanied by the written approval of the pupil’s practitioner.

SECTION 12. 118.29 (2) (a) 2., 2r. and 3. and (b) of the statutes are amended to read:

118.29 (2) (a) 2. May administer a prescription drug to a pupil in compliance with the written instructions of a practitioner if the pupil’s parent or guardian consents in writing; the prescription drug is supplied by the pupil’s parent or guardian in the original pharmacy-labeled package; and the package specifies the name of the pupil, the name of the prescriber, the name of the prescription drug, the dose, the effective date, and the directions in a legible format.

2r. Except for glucagon administered under subd. 2., may administer glucagon to any pupil who the school bus driver, employee, or volunteer knows is diabetic and who appears to be experiencing a severe hypoglycemic low blood sugar event with altered consciousness if, as soon as practicable, the school bus operator, employee, or volunteer reports the event to by dialing the telephone number “911” or, in an area in which the telephone number “911” is not available, the telephone number for an emergency medical service provider.

3. Is immune from civil liability for his or her acts or omissions in administering a nonprescription drug product or prescription drug to a pupil under subd. 1., 2., 2m., or 2r. unless the act is in violation of sub. (6) or the act or omission constitutes a high degree of negligence. This subdivision does not apply to health care professionals.

(b) Any school district administrator, county children with disabilities education board administrator, cooperative educational service agency administrator, public or private school principal, or private school administrator who authorizes an employee or volunteer to administer a nonprescription drug product or prescription drug to a pupil under par. (a) is immune from civil liability for the act of authorization unless it constitutes a high degree of negligence or the administrator or principal authorizes a person who has not received the required training under sub. (6) to administer a nonprescription drug product or prescription drug to a pupil.

SECTION 13. 118.29 (4) of the statutes is amended to read:

118.29 (4) WRITTEN POLICIES. Any school board, county children with disabilities education board, cooperative educational service agency or governing body of a private school whose employees or volunteers may be authorized to administer drugs nonprescription drug products or prescription drugs to pupils under this section shall adopt a written policy governing the administration of drugs nonprescription drug products and prescription drugs to pupils. In developing the policy, the school board, board, agency or governing body shall seek the

assistance of one or more ~~appropriate health care professionals~~ school nurses who are employees of the school board, board, agency or governing body or are providing services or consultation under s. 121.02 (1) (g). The policy shall include procedures for obtaining and filing in the school or other appropriate facility the written instructions and consent required under sub. (2) (a), for the periodic review of such written instructions by a registered nurse licensed under s. 441.06 or in a party state, as defined in s. 441.50 (2) (j), for the storing of ~~drugs non-prescription drug products~~ and prescription drugs, and for record keeping and for the appropriate instruction of persons who may be authorized to administer drugs or prescription drugs to pupils under this section, including documenting the administration of each dose, including errors.

SECTION 14. 118.29 (5) of the statutes is amended to read:

118.29 (5) EXEMPTION. No employee except a health care professional may be required to administer a nonpre-

scription drug product or prescription drug to a pupil under this section by any means other than ingestion.

SECTION 15. 118.29 (6) of the statutes is created to read:

118.29 (6) TRAINING. Notwithstanding sub. (2) (a) 1. to 2r., no school bus driver, employee, or volunteer may administer a nonprescription drug product or prescription drug under sub. (2) (a) 1. or 2., use an epinephrine auto-injector under sub. (2) (a) 2m., or administer glucagon under sub. (2) (a) 2r. unless he or she has received training, approved by the department, in administering nonprescription drug products and prescription drugs. This subsection does not apply to health care professionals.

SECTION 16m. Effective dates. This act takes effect on the first day of the 12th month beginning after publication, except as follows:

(1) The treatment of sections 115.001 (11) and 115.88 (1) and (1m) (am) and (b) of the statutes takes effect on January 1, 2011.