April 26, 2013

Dean:

1. Portions of this draft appear to be in conflict with s. 118.292, which was enacted last session as 2011 Wisconsin Act 85 (SB 204). Section 118.292 allows a pupil to possess and use an epinephrine auto–injector (EpiPen) only under certain conditions: the pupil uses the EpiPen to prevent the onset or alleviate the symptoms of a severe allergic reaction; the pupil has the written approval of the pupil's physician (and his or her parents, if the pupil is a minor); and the pupil has provided the school principal with a copy of these approvals.

Under this bill, if a school adopts a plan under s. 118.2925 (3) (a), a pupil may self–administer an EpiPen, using one provided by school personnel, if there is a prescription for its use by the pupil on file with the school nurse. Neither a physician's nor a parent's written approval is required.

2. I'm not sure why sub. (2) (b) of the draft (sub. (4) in the instructions) is necessary. I don't believe a school needs explicit authority to enter into a contract for supplies. In addition, the provision seems to limit a school to obtaining EpiPens only at fair market value, free, or at reduced prices. Is that your intent?

3. The bill allows the administration of an EpiPen to a pupil and the provision of an EpiPen to a pupil in accordance with a prescription, but does not specify where this may occur. You may wish to specify that this may occur only in school, on school premises, at a school–sponsored activity, or while under the supervision of a school authority. (Note that the bill also allows the administration of an EpiPen to a pupil or other person on school premises, without a prescription, if the pupil or other person is experiencing a severe allergic reaction.) In addition, the provision requiring reports refers to events occurring at school or on school premises.

Peter R. Grant
Managing Attorney
Phone: (608) 267–3362
E–mail: peter.grant@legis.wisconsin.gov