

LFC Requester:	Sunny Liu
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**AGENCY BILL ANALYSIS  
2019 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

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**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Check all that apply: Date 2/5/19  
 Original  Amendment  Bill No: SB48/aSJC/fla#1  
 Correction  Substitute

Sponsor: Mimi Stewart Agency Code: 924  
 Short STUDENT DIABETES Person Writing Daniel Manzano  
 Title: MANAGEMENT ACT Phone: 505-670-3820 Email Daniel.Manzano@state.nm.us

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY19	FY20		
NFI	NFI	N/A	N/A

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
NFI	NFI	NFI	N/A	N/A

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY19</b>	<b>FY20</b>	<b>FY21</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>	NFI	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	Recurring	General Fun and School District Budgets

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: None as of 1/28/19

Duplicates/Relates to Appropriation in the General Appropriation Act: None as of 1/28/19

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis of Senate Bill 48/Senate Floor Amendment 1 (SB48/aSEC/fla#1)

SB48/aSEC/fla#1 further amends The Student Diabetes Management Act as reflected in SB48 by removing the language that would ensure school employees would not be subject to any penalty or disciplinary action for refusing to serve as a diabetes care personnel. SB48/aSEC/fla#1 also removes the language that would prohibit disciplinary action under professional licensing rules as a result of activities authorized by the Act.

Synopsis of Senate Bill 48/Senate Judiciary Committee Amendment (SB48sjca)

SB48sjca changes the rule promulgation process from the DOH to the PED and changes the collection of the district report of district’s adherence to the Student Diabetes Management Act from the DOH to the purview of the PED and changes the administrative compliant process exclusively to fall under the PED.

Synopsis of Senate Bill 48

Senate Bill 48 (SB48) enacts the Student Diabetes Management Act to provide diabetes management by students and school personnel. SB48 requires the New Mexico Department of Health (DOH) in consultation with the New Mexico school nurses association and the Juvenile Diabetes Research Foundation (JDRF) to promulgate rules for the annual training of school employees, including nurses, for the care of students with diabetes. The parent or guardian of each student with diabetes who seeks diabetes care while at school must submit diabetes medical management plan. Students are allowed to manage their own diabetes if the parent approves.

SB48 requires a school nurse or at least one diabetes care personnel be at each school during regular school hours where a student with diabetes is attending and during all school-sponsored activities, on or off campus. Schools are prohibited from restricting a student’s enrollment due to diabetes.

Finally, SB48 requires that governing bodies to submit an annual report to the DOH and to the Public Education Department (PED). Parents or guardians also have a right to bring an administrative complaint to the PED against any school or governing body that fails to adhere to

the requirements of the Act.

## **FISCAL IMPLICATIONS**

### Fiscal Implications of SB48/aSEC/fla#1

SB48/aSEC/fla#1 could potentially create liability concerns for school employees that carry out the provisions of the Student Diabetes Management Act. While school insurance may provide coverage to a school and school staff, it is unclear as to the extent of that coverage. School employees serving as diabetes care personnel may need to apply for individual liability insurance.

### Fiscal Implications of SB48sjca

The PED would need to utilize existing staff for promulgating the rules, and collecting and posting the annual reports from the districts. In addition, the PED, through an administrative hearing officer or staff attorney, would need to investigate any administrative complaints received from a parent or guardian. As part of the administrative complaint process, due process would need to be provided prior to a final decision being made. With medically complex complaints, the PED would need to request the assistance of the DOH since they have the medical expertise in this area.

### Fiscal Implications of SB48

SB48 does not appropriate funding to the DOH, to the PED or to school districts, or charter schools for the implementation of the Act.

The fiscal implications of implementing this training in every school are unclear but should be considered. The requirement of a full-time nurse being at each school during regular hours where a student with a reported diabetes diagnosis is enrolled would need to consider workforce.

While the DOH is responsible for promulgating rule, the PED would need to utilize existing staff to inform school districts and state charter schools of the requirements and to be responsive to any administrative complaints received from a parent or guardian. Collaboration among departments should be noted.

## **SIGNIFICANT ISSUES**

### Significant Issues of SB48/aSEC/fla#1

By removing the subsection on page 5, SB48/aSEC/fla#1 would appear to open any individual providing care in accordance with the Student Diabetes Management Act to potential liability concerns. New Mexico's Nursing Practice Act, which regulates the practice of nurses in our state, as reflected in state statute (§) 6.31.1, specifically in 61-3-24.1. Article 9, reads "a party state or the officers or employees or agents of a party state licensing board who act in accordance with the provisions of the Nurse Licensure Compact shall not be liable on account of any act or omission in good faith while engaged in the performance of their duties under that compact." "Good faith", as used in this article, does not include willful misconduct, gross negligence or recklessness. This would suggest that a school nurse acting in good faith to carry out the

provisions of this Act may have some protections. With the removal of the subsection on page 5, the nurse may still be subject to disciplinary action under the New Mexico Nursing Practice Act.

School employees serving as diabetes care personnel would not be included in the Nursing Practice Act but would have some protections under the New Mexico Good Samaritan Law. § 24-10-3 provides protection only for persons rendering emergency care. In the event that school diabetes care personnel were to provide non-emergent care to a student with diabetes that resulted in complications, the New Mexico Good Samaritan Law would not apply.

The removal of the first sentence of the subsection D on page 5 of the original bill may increase the likelihood of non-nurse school employees being compelled to serve as diabetes care personnel when asked in order to avoid possible disciplinary action.

### Significant Issues of SB48sjca

SB48sjca does not address the significant issues as detailed in the analysis of SB48. SB48sjca places the rulemaking report gathering and administrative complaint investigation of the Act focusing on a complex medical condition on the PED as opposed to the DOH.

In consultation with the DOH, the DOH, with an emphasis on health as opposed to public education, has staff with more defined medical expertise to address the requirements of SB48sjca. The DOH also houses a Diabetes Prevention and Control Bureau within their Public Health Division that could provide the support necessary for SB48sjca. Said support could be in collaboration with the PED as opposed to the proposed changes of PED oversight per SB48sjca.

### Significant Issues of SB48

According to the PED 2016-2017 Annual School Health Services Summary Report, 24.6% of visits to the Student Health Office are chronic disease related. Specifically, the number of public school students with a diabetes diagnosis is 993, representing 14.4% of medically complex procedures performed by school nursing staff. (<https://webnew.ped.state.nm.us/bureaus/safe-healthy-schools/school-health-resources/>).

Diabetes care for students in New Mexico schools is currently guided by one or more of the following documents: a student's Individualized Healthcare Plan (IHP), Individualized Education Program (IEP), or Section 504 plan. Each of these plans includes student, parent, and health services staff engagement to support the student's diabetes management plan. SB48 ensures the obligations of school districts under the federal Individuals with Disabilities Act or a Section 504 plan remain in force. SB48 should also consider IHPs as they are currently designed to support a medical management plan for diabetes.

SB48 specifies that all school nurses and diabetes care personnel receive an annual training and sets forth several criteria for training content. SB48 also proposes that diabetes care personnel be trained within schools to provide care to students with diabetes. The training would include recognition of hypo- and hyperglycemia, understanding of target ranges for blood glucose levels, performing blood glucose and ketone testing, administering glucagon and insulin, recognizing emergency complications related to diabetes, and the interaction of food intake and physical activity on blood glucose levels. SB48, page 4, lines 15-16, states "A governing body shall not require the diabetes care personnel be health care practitioners." However, as SB48 requires the training of a minimum of two school employees at each school attended by a student with

diabetes. In lieu of the availability of a full-time nurse, SB48 allows for the provision of the second trained employee to serve as a diabetes care professional. This means, in instances where a full-time nurse is not available, that the diabetes care personnel may not necessarily have any type of health care background and still be allowed to provide diabetes care to students. The National Institute of Health recommends a team of “health care professionals” to help in diabetes self-care (<https://www.niddk.nih.gov/health-information/diabetes/overview/managing-diabetes>). Due to the complexity of this chronic condition, the bill should consider implications when non-health care professionals to provide comprehensive care to students with diabetes.

For instance, the Institute for Safe Medication Practices (ISMP) identifies diabetes medications, such as insulin and oral hypoglycemic agents, as “High-Alert” medications. This means that these medications “bear a heightened risk of causing significant patient harm when they are used in error.” Many hospitals have a policy that requires insulin dosing to be double-checked by two healthcare professionals. The Joint Commission recommends establishing a system where one nurse prepares the dose of insulin and another reviews it ([http://www.jointcommission.org/assets/1/18/SEA\\_11.pdf](http://www.jointcommission.org/assets/1/18/SEA_11.pdf)). For this reason, careful consideration should be given to who is allowed to administer these types of medication.

## **PERFORMANCE IMPLICATIONS**

None

## **ADMINISTRATIVE IMPLICATIONS**

### Administrative Implications of SB48/aSEC/fla#1

Schools that are unable to provide a licensed school nurse may have difficulty in recruiting and training non-nurse school employees to serve as diabetes care personnel based on the changes in liability and discipline within SB48/aSEC/fla#1.

### Administrative Implications of SB48sjca

SB48sjca has immediate administrative implications on the PED since the PED would now need to promulgate rules, in conjunction with the DOH, American diabetes association and other stakeholders in accordance with the law on the training of school employees for the care of students with diabetes. In addition, the PED need to promulgate a rule on the format of the annual report to be submitted by the school districts on an annual basis. Both rules must be promulgated by December 31, 2019.

Future administrative implications for the PED include the annual website publishing of the reports by each November 15<sup>th</sup> with the first report being due on November 15, 2020.

### Administrative Implications of SB48

SB48 has some short and long-term administrative implications for the PED. Most importantly, the PED is tasked with addressing any administrative complaint brought by a parent or guardian against any school or governing body that fails to meet the obligations as defined in the Act. This would require existing staff to engage in the administrative complaint process and may require existing staff to modify the PED New Mexico Administrative Code (NMAC) rule regarding complaint procedures.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

None as of 1/28/2019

### **TECHNICAL ISSUES**

#### Technical Issues of SB48/aSEC/fla#1

None

#### Technical Issues SB48sjca

It would be helpful to add wording that would require a school district to comply with the administrative complaint process if a complaint is filed by parents or guardians regarding the alleged failure to meet the Act.

### **OTHER SUBSTANTIVE ISSUES**

#### Other Substantive Issues of SB48/aSEC/fla#1

None

#### Other Substantive Issues of SB48

SB48 requires the DOH to promulgate a rule for the Student Diabetes Management Act. As the Act includes allowing a parent or guardian to bring an administrative complaint to the PED for any school not in compliance with the Act, the DOH would be promulgating a rule inclusive of an administrative compliant process that would be overseen by the PED. This would necessitate significant collaboration between the PED and the DOH in those instances where administrative complaints are brought to the PED. This may also include the PED needing to revise existing rules and/or processes regarding parental or guardian complaints as reflected in *NMAC 6.10.3, Complaint Procedure*.

SB48 states a governing body shall not restrict a student who has diabetes from attending any school on the basis that the student has diabetes. Sponsorship might note that this is established in federal regulations. The Centers for Disease Control and Prevention (CDC) states, "Public schools and schools that receive federal funding cannot treat children with diabetes differently by the Americans with Disabilities Act, the Individuals with Disabilities Education Act, and Section 504 of the Rehabilitation Act of 1973."

(<https://elbiruniblogspotcom.blogspot.com/2015/08/managing-diabetes-at-school-features-cdc.html> )

### **ALTERNATIVES**

#### Alternative of SB48/aSEC/fla#1

The legislator may wish to add language clarifying protections from liability for health care practitioners, school employees, school nurses, schools or governing bodies.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

If SB48/aSEC/fla#1 is not enacted, school districts and charter schools will continue to address diabetes care as established through local district or charter school protocol and processes.

## **AMENDMENTS**

None as of 1/28/2019