

<b>LFC Requester:</b>	<b>Christine Boerner</b>
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**AGENCY BILL ANALYSIS  
2017 REGULAR SESSION**

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

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*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**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 2/4/2017  
**Original**     **Amendment**    \_\_\_\_\_ **Bill No:** HB287  
**Correction**     **Substitute**    \_\_\_\_\_

**Sponsor:** Rep. George Dodge, Jr.    **Agency Code:** 924  
**Short Title:** STUDENT DIABETES MANAGEMENT ACT    **Person Writing:** Aguilar/A. Garcia  
**Title:** \_\_\_\_\_    **Phone:** 505-827-6519    **Email:** PaulJ.Aguilar@state.nm.us

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		
	None Noted	Recurring	General Fund and School District Budgets

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	Recurring	General Fund and School District Budgets

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates SB148

## **SECTION III: NARRATIVE**

### **BILL SUMMARY**

#### **Synopsis:**

House Bill 287 (HB287) enacts the Student Diabetes Management Act to provide for diabetes management by students and school personnel. HB287 requires the New Mexico Public Education Department (PED), in consultation with the American Diabetes Association, the Department of Health (DOH), New Mexico School Nurses Association, and the Juvenile Diabetes Research Foundation, to promulgate rules for the training of a minimum of three school employees to care for students with diabetes. HB287 sets forth several criteria for training frequency and content.

HB287 also requires that the school nurse, or at least one diabetes care personnel member, be available to provide care “during regular school hours and during all school-sponsored activities, trips, extended offsite excursions and extracurricular activities and on buses where the bus driver is not a diabetes care personnel member.”

Finally, HB287 requires that “governing bodies” report the total number of students with a diabetes diagnosis to the PED. It also requires they provide documentation, confirming their compliance with The Student Diabetes Management Act. The PED would be responsible for collecting the reports and posting them on the PED website within one month of receipt.

### **FISCAL IMPLICATIONS**

HB287 does not appropriate funding to the PED or to school districts, state-chartered or locally chartered charter schools, implementing the provisions of this bill.

The fiscal implications of implementing this training in every school are unclear but could be significant. The training must be conducted by a school nurse, or if the school does not have a nurse, a “health care practitioner” must provide the training. The staff required to perform the training may require additional school district funds.

The PED would need to utilize existing staff, or hire new staff, to monitor compliance of the Student Diabetes Management Act, collect reports as required by HB287, and receive and address complaints related to this act. This may have a fiscal impact on the PED; however the extent of this is unclear.

### **SIGNIFICANT ISSUES**

Many of the provisions of this bill will be difficult to implement in small rural districts, particularly with the three trained staff requirement and the requirement that trained staff be available during athletic events and other extra-curricular activities and excursions. This amounts to another unfunded requirement that does not take into consideration the ability to implement.

Page 10, lines 1-9 of HB287, addresses liability with the Student Diabetes Management Act. It states that no one acting as a prudent person would, under the Student Diabetes Management Act, be liable for civil damages or subject to disciplinary action. It does, however, state that students with diabetes and their parents or guardians may file an administrative complaint with the PED or file a “lawsuit for declaratory, injunctive, or monetary relief, against any school or governing body that fails to meet its obligations to train school personnel to provide diabetes care as provided in Section 3 of the Student Diabetes Management Act, to provide the diabetes care described in Section 5 of the Student Diabetes Management Act or to permit self-management of diabetes as outlined in Section 8 of the Student Diabetes Management Act.”

It is important to note that a student's right to self-administer certain medications, including diabetes medications, is already outlined in 6.12.2.9 NMAC.

According to the PED 2015-2016 Annual School Health Services Summary Report, 25% of visits to the Student Health Office are chronic disease related, of which diabetes is one. The number of public school students with a diabetes diagnosis is 1,099, representing 17% of medically complex procedures performed by school nursing staff. ([http://ped.state.nm.us/sfsb/reports/2017/PED-MY\\_ASHSR%20Brochure%20Final-16Dec16.pdf](http://ped.state.nm.us/sfsb/reports/2017/PED-MY_ASHSR%20Brochure%20Final-16Dec16.pdf)). 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.

HB287 proposes that diabetes care personnel be trained within schools to provide care to students with diabetes. The training must 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. HB287, page 4, lines 16-17, states: "A governing body shall not require the diabetes care personnel be health care practitioners." As defined in HB287, a health care practitioner means a person licensed to provide health care in the ordinary course of business." This means that the diabetes care personnel do not need to have any type of health care background in order to provide diabetes care to students. The National Institute of Health describes diabetes as a "complex group of diseases with a variety of causes" (<https://www.ncbi.nlm.nih.gov/pubmedhealth/PMHT0024704/>). **Due to the complexity of this chronic condition, it may be unsuitable for non-health care professionals to provide comprehensive care to students with diabetes.**

In addition to the complexity of the disease, 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." In fact, 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, it may be unsafe and inappropriate for individuals who are not health care practitioners to administer these types of medication (<http://www.ismp.org/communityRx/tools/ambulatoryhighalert.asp>).

## **ADMINISTRATIVE IMPLICATIONS**

HB287 has several administrative implications for the PED. It may be difficult, with the existing limited staff, for the PED to fulfill all of the requirements of HB287. The PED would be required to notify school districts and state and locally chartered charter schools of the requirement to comply with the Student Diabetes Management Act. The PED is also tasked with promulgating rules for the training of school employees for the care of students with diabetes. This would require existing staff to engage in the rulemaking process. In addition to promulgating a rule, HB287 requires the PED to collect reports regarding the total number of students with a diabetes diagnosis as well as confirmation from the schools that they are compliant with the Student Diabetes Management Act. The PED would also need existing staff to work with the Information Technology (IT) department to post the reports on the PED website, as required by HB287. The reports must be published and posted to the website within one month of receipt.

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

Duplicates SB148

### **TECHNICAL ISSUES**

In section 10 of HB287, “Enforcement,” it is unclear as to which entities will be required to report to the PED. Although HB287 states: “governing bodies shall provide a report to the PED,” it also states that the report “shall state how many students with diabetes are attending school in each school district.” This does not account for state or locally chartered charter schools. The legislator may wish to consider revising this language to align with the definition of “governing body” in HB287.

### **OTHER SUBSTANTIVE ISSUES**

HB287 states that a governing body shall not restrict a student who has diabetes from attending any school on the basis that the student has diabetes. This fact is already 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://www.cdc.gov/healthyschools/npao/diabetes.htm>.”

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

If HB287 is not enacted, school districts and state chartered-charter schools will continue to address diabetes care as established through local district or state chartered-charter school protocol and processes. Local school districts and state-chartered charter schools will continue to not have restrictions for the enrollment of students in a given school per the Americans with Disabilities Act, the Individuals with Disabilities, and Section 504 of the Rehabilitation Act.