

Proposed Rule Abstract

1. **Agency:** Public Education Department (PED)
2. **Rule Citation:** 6.12.11 NMAC, Student Diabetes Management
3. **Rulemaking Action:** New Rule
4. **Register Issue and Date of Notice of Proposed Rulemaking:** Volume 30, Issue 18, September 24, 2019
5. **Effective Date:** November 12, 2019
6. **Citation to Specific Legal Authority:** Sections 9-24-8, 22-2-1, 22-2-2, and 22-34-1 through 22-34-9 NMSA 1978
7. **Short Explanation of the Rule's Purpose:** To provide parameters for diabetes care personnel training and diabetes care management of students with diabetes in public schools.
8. **Link to Full Text of the Rule:** https://webnew.ped.state.nm.us/wp-content/uploads/2019/09/6.12.11-NMAC_Student-Diabetes-Integrated_web.docx
9. **How Information on the Rule Can Be Obtained:** From the New Mexico Public Education Department, 300 Don Gaspar Avenue, Room 101, Santa Fe, NM 87501 or rule.feedback@state.nm.us.
10. **Comment Period and Deadlines:** September 24, 2019 to October 25, 2019 at 5:00 p.m. Written comments may be submitted to the New Mexico Public Education Department, 300 Don Gaspar Avenue, Room 101, Santa Fe, NM 87501, by electronic mail to rule.feedback@state.nm.us, or by fax to (505) 827-6520.
11. **Rule Hearing:** October 25, 2019, from 9:00 a.m. to 12:00 p.m., in Mabry Hall located at the Jerry Apodaca Education Building, 300 Don Gaspar Avenue, Santa Fe, NM 87501.
12. **Link to Permanent Agency Rulemaking Record:** <http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>

Adopted Rule Update

1. **Register Issue and Date of Adopted Rule:** Volume 30, Issue 22, November 26, 2019
2. **Date Notice of Proposed Rulemaking Was Reported to the Committee:** October 25, 2019
3. **Link to Proposed Rule Report:** <https://www.nmlegis.gov/handouts/ALESC%20102319%20Item%2014%20A.1%20-%20PROPOSED%20RULE%20-%20Student%20Diabetes%20Management.pdf>
4. **Minor, Non-Substantive Changes from the Rule as Proposed:** Adopted rule makes minor changes to requirements regarding school nurse or diabetes care personnel availability, and corrects several language consistency, grammatical, and style guide errors.

Summary of Adopted Rule

The November 26, 2019 issue of the *New Mexico Register* contained a notice of adopted rulemaking for Part 11 of 6.12 NMAC, Student Diabetes Management. The adopted rule ensures students diagnosed with diabetes receive appropriate and necessary diabetes

care as specified in the student's diabetes medical management plan. Each governing body – defined as the school board of a school district, the entity that governs a state-chartered or locally chartered charter school, or the entity that governs a private school – is required to ensure annual diabetes training programs are provided to all school nurses and diabetes care personnel. The adopted rule allows a student to self-manage their diabetes upon written request of a parent or guardian, authorization by the student's diabetes medical management plans, and demonstrated proficiency. A student with diabetes and the student's parent or guardian will be allowed to submit a written administrative complaint to the Public Education Department (PED) secretary or the secretary's designee indicating the school or governing body failed to meet its obligations to train school personnel to provide diabetes care or to permit self-management of diabetes per the Student Diabetes Management Act. By October 15, 2020, and every year thereafter, governing bodies will be required to submit data to PED, including the number of students diagnosed with diabetes and information regarding the diabetes care training and diabetes care personnel. See, Attachment 1, Adopted Rule, 6.12.11 NMAC, Student Diabetes Management.

Changes from Proposed Rule

The adopted rule allows students to self-manage their diabetes in any area of a school or school grounds, and consistent with recommendations from LESC staff and language from the Diabetes Management Act, PED removed the specification “so long as [the self-management] does not disrupt the education environment of other students.” The adopted rule also clarifies that school nurses or diabetes care personnel only need to be available at extracurricular activities when a student with diabetes is a participant, and available on buses where a student with diabetes is a passenger, as opposed to at all extracurricular activities or on all buses. Finally, the adopted rule consistently references the “Student Diabetes Management Act” as opposed to just “the Act,” and corrects several minor grammatical and style guide errors.

In the adopted rule, PED did not address all technical issues highlighted by LESC staff. These issues include defining terms in rule that were previously defined in statute, inconsistencies with language from the Student Diabetes Management Act, and interchangeable use of the terms “guardian” and “legal guardian.”

Analysis

Statutory Authority. PED cites Section 9-24-8 NMSA 1978 and Sections 22-2-1 through 22-2-2 NMSA 1978, which grant the department general rulemaking authority, as statutory authority for the proposed rulemaking. PED also cites Sections 22-34-1 through 22-34-9 NMSA 1978 (Student Diabetes Management Act).

Diabetes Care Personnel Training. The adopted rule requires each governing body to ensure annual diabetes training programs are provided to all school nurses and diabetes care personnel. A licensed school nurse or a licensed health care practitioner with expertise in diabetes will be required to provide the training. Training content will have to include, at minimum, the following:

- (1) Identification and treatment of hyperglycemia and hypoglycemia;

- (2) Appropriate actions to take when blood glucose levels are outside the target ranges indicated by a student's diabetes medical management plan;
- (3) Understanding interpretation of health care practitioner instructions regarding diabetes medication drug dosage, frequency, and manner of administration;
- (4) Performance of finger stick blood glucose testing and ketone testing and recording of results;
- (5) Administration of glucagon and insulin and recording of results;
- (6) Administration of glucagon and insulin through the insulin delivery system;
- (7) Recognizing diabetes-related complications that require emergency assistance; and
- (8) Recommended schedules for food intake, the effect of physical activity upon blood glucose levels, and appropriate actions to be implemented in the case of a schedule disruption.

The adopted rule prohibits each governing body from requiring that diabetes care personnel be health care practitioners.

Diabetes Care Personnel. The governing body of any school attended by a student diagnosed with diabetes is required to ensure, at minimum, two school employees receive diabetes care personnel training. If fewer than two school employees are

available for training, the principal or other school administrator will be required to distribute to all staff a written notice stating the school is seeking volunteers to serve as diabetes care personnel. The notice must inform staff the school is required to provide diabetes care to one or more students and is seeking personnel willing to be trained to provide such care. The notice must state participation is voluntary and no school, school district, or governing body will take action against any staff member who does not volunteer to be designated. Additionally, the notice must inform staff of the tasks to be performed by diabetes care personnel and the contact information of the person whom staff should contact to volunteer to be diabetes care personnel.

Diabetes Medical Management Plan. Under the adopted rule, the parent or legal guardian of a student with diabetes who seeks diabetes care while at school will be required to submit a diabetes medical management plan to the school. The adopted rule defines "diabetes medical management plan" as a document developed and signed by a student's personal health care practitioner and parent or guardian that describes the health services a student needs at school. Schools that receive a diabetes medical management plan are required to review and implement the plan.

Diabetes Self-Management. The adopted rule allows a student to self-manage their diabetes upon written request of a parent or guardian and authorization by the student's diabetes medical management plan. Additionally, unlike the Student Diabetes Management Act, the adopted rule requires "demonstrated proficiency" before a student is permitted to perform diabetes self-management. Under such circumstances, a student with diabetes will be able to do the following:

- (1) perform self-management blood glucose monitoring to check blood glucose and ketones;
- (2) administer prescribed medication for the treatment of diabetes, including the self-administration of insulin through the insulin delivery system that the student uses as determined in the student’s diabetes medical management plan; and
- (3) treat hyperglycemia and hypoglycemia as determined in the student’s medical management plan.

Pursuant to the Student Diabetes Management Act, a student with diabetes will be allowed to self-manage “in any area of the school or school grounds and at any school-related activity.” While the adopted rule states a student with diabetes will be permitted to self-manage in any area of the school or school grounds, the adopted rule does not indicate whether a student will also be allowed to self-manage “at any school-related activity.” At the request of the student or the student’s parent or guardian, the student will be permitted access to a private area for performing diabetes care tasks. The student will be allowed to have, at all times, the supplies and equipment needed to perform monitoring and treatment functions.

Each governing body is required to develop written policies or procedures to address the safe and appropriate storage of medical supplies and diabetes medication.

School Diabetes Care. Each governing body is required to ensure students with diabetes receive appropriate and necessary diabetes care as specified in the student’s diabetes medical management plan. A school nurse or – in the absence of a school nurse – diabetes care personnel will be required to perform diabetes care functions, including the following:

- (1) Checking and recording the student’s blood glucose or ketone levels and assisting the student with recording these levels;
- (2) Responding to blood glucose levels that are outside of the student’s target range;
- (3) Administering glucagon and other emergency treatments as prescribed;
- (4) Administering insulin or assisting a student in administering insulin;
- (5) Providing oral diabetes medications as prescribed; and
- (6) Following instructions regarding meals, snacks, and physical activity.

The adopted rule prohibits a governing body from restricting a student diagnosed with diabetes from attending any school because the student is diagnosed with diabetes or the school does not have a full-time nurse or trained diabetes care personnel. A school will be prohibited from requiring or compelling parents or guardians to volunteer to assume the official responsibility of diabetes care for a student with diabetes if a parent or guardian attends a school-sponsored activity, trip, extended offsite excursion, or extracurricular activity in which the student with diabetes is participating.

Administrative Complaint. The adopted rule states a student with diabetes and the student’s parent or guardian may submit a written administrative complaint, via e-mail or mail, to the PED secretary or secretary’s designee containing “a statement of the facts on which the complaint is based specific to any school or governing body that fails to meet its obligations to train school personnel to provide diabetes care, or

to permit self-management of diabetes” pursuant to the Student Diabetes Management Act. The secretary or secretary’s designee may require the parent or guardian, school district, or charter school to provide additional documentation before responding to the complaint. If additional documentation is requested, it will be due within 10 days of the request. The secretary or secretary’s designee, at the secretary’s discretion, may require a hearing to be conducted within 60 days of receipt of the complaint or additional documentation, whichever is later, and to include a representative of the school district or charter school. The secretary or the secretary’s designee is required to provide a written response with a final decision within 30 days of receipt of the complaint or within 30 days of the hearing’s conclusion, whichever is later.

Reporting. The adopted rule requires governing bodies to submit to PED the schools in which each identified diabetes care personnel provide services and the number of students with a diagnosis of diabetes within the school district or state-chartered charter school. Governing bodies will need to report the date the diabetes care training was provided to diabetes care personnel, the name of the licensed school nurse or licensed health care practitioner who provided the training, and a copy of the diabetes care training agenda. Additionally, governing bodies will have to submit the name and title of each staff person identified as diabetes care personnel and other personnel who received the diabetes care training. The data will need to be submitted to PED by October 15, 2020 and by October 15 every year thereafter.

Pursuant to the Student Diabetes Management Act, PED is required to establish by rule the format of the report by December 31, 2019. The adopted rule states the data must be submitted to PED “in a format required by the department,” making it unclear in what format PED wants the report. The adopted rule also states the data to be submitted is for “the preceding school year.”

Additionally, PED is required to post each school district’s and state-chartered charter school’s report on the department’s website by November 15, 2020 and by November 15 every year thereafter.

Technical Issues

Definitions. According to Section 14-4-5.7 NMSA 1978 of the State Rules Act, terms defined in applicable statute “should not” be defined in rule. Any conflict between statutorily defined terms and their corresponding regulatory definitions will be resolved in favor of statute. The adopted rule duplicates definitions from the Student Diabetes Management Act for three terms – diabetes care personnel, governing body, and school employee. The adopted rule defines “diabetes,” “diabetes medical management plan,” and “school” similarly, but not identically, to how the terms are defined in the Student Diabetes Management Act. See Attachment 2, Table of Conflicting Defined Terms, for a comparison of the term’s definitional language.

Application of other laws. The Student Diabetes Management Act states the provisions in the Act “shall not constitute the practice of nursing and shall be exempted from all applicable statutory or regulatory provisions that restrict what activities can be delegated to or performed by a person who is not a health care practitioner.” However, the adopted rule states its provisions shall not constitute the practice of

nursing and “school districts and governing bodies” shall be exempted from all applicable statutory or regulatory provisions that restrict what activities can be delegated to or performed by a person who is not a licensed health care practitioner in the provision of diabetes care as provided within this rule. PED should remove “school districts and governing bodies” from Paragraph 1, under the “Application of Other Laws,” in Subsection A of Section 6.12.11.14 to align the adopted rule with the Student Diabetes Management Act.

Other. The terms “guardian” and “legal guardian” appear to be used interchangeably, creating inconsistencies throughout the adopted rule. The Student Diabetes Management Act only uses the term “guardian.”

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TITLE 6 PRIMARY AND SECONDARY EDUCATION

CHAPTER 12 PUBLIC SCHOOL ADMINISTRATION - HEALTH AND SAFETY

PART 11 STUDENT DIABETES MANAGEMENT

6.12.11.1 ISSUING AGENCY: Public Education Department herein after the department.
[6.12.11.1 NMAC – N, 11/26/2019]

6.12.11.2 SCOPE: This rule applies to school districts, local school boards, state-chartered charter schools and governing bodies, and private schools.
[6.12.11.2 NMAC – N, 11/26/2019]

6.12.11.3 STATUTORY AUTHORITY: This rule is promulgated by the secretary of public education and the public education department under the authority of Sections 9-24-8, 22-2-1, 22-2-2, and 22-34-1 through 22-34-9 NMSA 1978.
[6.12.11.3 NMAC – N, 11/26/2019]

6.12.11.4 DURATION: Permanent.
[6.12.11.4 NMAC – N, 11/26/2019]

6.12.11.5 EFFECTIVE DATE: November 26, 2019, unless a later date is cited at the end of section. [6.12.11.5 NMAC – N, 11/26/2019]

6.12.11.6 OBJECTIVE: The objective of this rule is to provide parameters for diabetes care personnel training and diabetes care management of students with diabetes in public schools.
[6.12.11.6 NMAC – N, 11/26/2019]

6.12.11.7 DEFINITIONS:

A. “Diabetes” means a metabolic disorder of type one or type two diabetes mellitus, complications related to diabetes mellitus, or prediabetes.

B. “Diabetes care personnel” means a school employee who volunteers to be trained and is trained in accordance with the provisions of this rule.

C. “Diabetes medical management plan” means a document developed and signed by a student's personal health care practitioner and parent or guardian that describes the health services a student needs at school.

D. “Governing body” means:

(1) the school board of a school district;

(2) the entity that governs a state-chartered or locally chartered charter school; or

(3) the entity that governs a private school.

E. “Hyperglycemia” means blood glucose levels higher than normal medically established parameters.

F. “Hypoglycemia” means blood glucose levels lower than normal medically established parameters.

G. “School” means a public school, including a charter school, or private school that students attend in person.

H. “School employee” means a person employed by a school, a person employed by the department of health or a local health department or by the public education department who is assigned to a school or a contractor designated to provide diabetes management services at a school pursuant to the provisions of this rule.

I. “Self-administration” means a student's own use of prescribed diabetes medication pursuant to a prescription from a health care practitioner.

J. “Self-management” means a student's monitoring of blood glucose levels and for the presence of ketones.

[6.12.11.7 NMAC – N, 11/26/2019]

6.12.11.8 DIABETES CARE PERSONNEL TRAINING:

- A.** Each governing body shall ensure annual diabetes training programs are provided to all school nurses and diabetes care personnel. Training content for the annual diabetes training program, at a minimum, shall include:
- (1) identification and treatment of hyperglycemia and hypoglycemia;
 - (2) appropriate actions to take when blood glucose levels are outside the target ranges indicated by a student's diabetes medical management plan;
 - (3) understanding interpretation of health care practitioner instructions regarding diabetes medication drug dosage, frequency, and manner of administration;
 - (4) performance of finger stick blood glucose testing and ketone testing and recording of results;
 - (5) administration of glucagon and insulin and recording of results;
 - (6) administration of glucagon and insulin through the insulin delivery system;
 - (7) recognizing diabetes-related complications that require emergency assistance; and
 - (8) recommended schedules for food intake, the effect of physical activity upon blood glucose levels, and appropriate actions to be implemented in the case of a schedule disruption.
- B.** Each governing body shall ensure a minimum of two school employees, at each school attended by a student with diabetes, receive the training outlined in this rule.
- C.** Each governing body shall not require that diabetes care personnel be health care practitioners.
- D.** If at any time fewer than two school employees are available to be trained at a school, the principal or other school administrator shall distribute to all staff a written notice stating that the school is seeking volunteers to serve as diabetes care personnel. This notice shall inform staff of the following:
- (1) the school is required to provide diabetes care to one or more students with diabetes and is seeking personnel willing to be trained to provide that care;
 - (2) the tasks to be performed by diabetes care personnel;
 - (3) participation is voluntary and no school, school district or governing body will take action against any staff member who does not volunteer to be designated;
 - (4) training will be provided to employees who volunteer to provide care; and
 - (5) the contact information of the person whom staff should contact in order to volunteer to be diabetes care personnel.
- E.** Annual diabetes training programs shall be provided by the school nurse if the school has a licensed school nurse or by a licensed health care practitioner with expertise in diabetes.
- F.** Each governing body shall also ensure annual training is provided to all school personnel with a primary responsibility for supervising a student with diabetes during some portion of the school day that includes bus drivers responsible for transporting a student with diabetes. Training for these individuals must include:
- (1) recognition of hyperglycemia;
 - (2) recognition of hypoglycemia; and
 - (3) actions to take in response to diabetes-related emergency situations.

[6.12.11.8 NMAC – N, 11/26/2019]

6.12.11.9 DIABETES MEDICAL MANAGEMENT PLAN:

- A.** The parent or legal guardian of the student with diabetes who seeks diabetes care while at school shall submit a diabetes medical management plan to the school.
- B.** Each school that receives a diabetes medical management plan shall review and implement the plan.

[6.12.11.9 NMAC – N, 11/26/2019]

6.12.11.10 SCHOOL DIABETES CARE:

- A.** Each governing body shall ensure that all students diagnosed with diabetes receive appropriate and necessary diabetes care as specified in the student's diabetes medical management plan.
- B.** In accordance with a student's diabetes medical management plan, a school nurse, or in the absence of a school nurse, diabetes care personnel shall perform diabetes care functions that may include:
- (1) checking and recording the student's blood glucose or ketone levels and assisting the student with recording these levels;
 - (2) responding to blood glucose levels that are outside of the student's target range;
 - (3) administering glucagon and other emergency treatments as prescribed;
 - (4) administering insulin or assisting a student in administering insulin;
 - (5) providing oral diabetes medications as prescribed; and
 - (6) following instructions regarding meals, snacks and physical activity.

C. A school nurse or at least one diabetes care personnel shall be at each school where a student with diabetes is attending and shall be available to provide care to each student with diabetes pursuant to this rule during regular school hours, all school-sponsored activities, trips, extended offsite school-sponsored excursions, extracurricular activities where a student with diabetes is a participant, and on buses where the bus driver has not been trained in diabetes care and a student with diabetes is a passenger.

[6.12.11.10 NMAC – N, 11/26/2019]

6.12.11.11 SCHOOL ASSIGNMENT: DIABETES CARE PROVISION:

A. Students diagnosed with diabetes shall attend the school they would otherwise attend if they were not diagnosed with diabetes, and the diabetes care specified in the student’s diabetes medical management plan shall be provided at the student’s school.

B. Each governing body shall not restrict a student diagnosed with diabetes from attending any school on the basis that;

- (1) the student is diagnosed with diabetes;
- (2) the school does not have a full-time school nurse; or
- (3) the school does not have trained diabetes care personnel.

C. A school shall not require nor compel parents or guardians to provide diabetes care for a student with diabetes at school or school-related activities.

D. Each governing body may allow a parent or guardian to volunteer to assume the official responsibility of diabetes care for a student diagnosed with diabetes should the parent or guardian be attending a school sponsored activity, trip, extended offsite excursion, or extracurricular activity in which the student with diabetes is participating.

[6.12.11.11 NMAC – N, 11/26/2019]

6.12.11.12 DIABETES SELF-MANAGEMENT:

A. Upon written request of a parent or guardian of a student with diabetes and authorization by the student’s diabetes medical management plan, and upon demonstrated proficiency, a student shall be permitted to:

- (1) perform self-management blood glucose monitoring to check blood glucose and ketones;
- (2) administer prescribed medication for the treatment of diabetes including the self-administration of insulin through the insulin delivery system that the student uses as determined in the student’s diabetes medical management plan;
- (3) treat hyperglycemia as determined in the student’s medical management plan; and
- (4) treat hypoglycemia as determined in the student’s diabetes medical management plan.

B. A student with diabetes shall be permitted to self-manage in any area of the school or school grounds.

C. A student with diabetes shall be permitted to possess on the student’s person at all times all necessary supplies and equipment to perform these monitoring and treatment functions.

D. If a student’s parent or guardian or the student requests, the student shall have access to a private area for performing diabetes care tasks.

E. Each governing body shall develop written policies or procedures to address safe storage of medical supplies and for the safe and appropriate storage of diabetes medication.

[6.12.11.12 NMAC – N, 11/26/2019]

6.12.11.13 ENFORCEMENT AND REPORTING:

A. A student with diabetes and the student’s parent or guardian may submit a written administrative complaint, via e-mail or via mail, to the secretary or secretary’s designee containing a statement of the facts on which the complaint is based specific to any school or governing body that fails to meet its obligations to train school personnel to provide diabetes care, or to permit self-management of diabetes per the Student Diabetes Management Act. The secretary or secretary’s designee may require additional documentation to be provided by the parent or guardian, school district or charter

school before responding to the complaint. Such additional documentation, if requested, shall be due within 10 days of the request. The secretary or secretary's designee, at the secretary's discretion, may require a hearing to be conducted within 60 days of receipt of the complaint or additional documentation, whichever is later, and to include a representative of the school district or charter school, before the secretary or secretary's designee. The secretary or the secretary's designee shall provide a written response with a final decision within 30 days of receipt of the complaint or within 30 days of the hearing's conclusion, whichever is later.

B. Governing bodies shall submit the following data to the department by October 15, 2020, and no later than October 15 every year thereafter, in a format required by the department for the preceding school year:

- (1) the number of students within the school district or state charter school with a diagnosis of diabetes;
- (2) the date(s) of the diabetes care training(s) provided to diabetes care personnel;
- (3) the name(s) of the licensed school nurse or licensed health care practitioner who provided the diabetes care training(s); (4) a copy of the agenda for the diabetes care training(s);
- (5) the name(s) and title(s) of each staff person identified as a diabetes care personnel;
- (6) the name(s) and title(s) of any other personnel who received the diabetes care training(s); and
- (7) the school(s) in which each identified diabetes care personnel provides services.

C. The department will post each district and state charter school report on the department's website by November 15, 2020, and by November 15 every year thereafter.

[6.12.11.13 NMAC – N, 11/26/2019]

6.12.11.14 APPLICATION OF OTHER LAWS:

A. The provisions in this rule shall not constitute the practice of nursing and school districts and governing bodies shall be exempted from all applicable statutory or regulatory provisions that restrict what activities can be delegated to or performed by a person who is not a licensed health care practitioner in the provision of diabetes care as provided within this rule.

B. The provisions in this rule shall not alter, diminish or limit the rights and remedies of eligible students and parents or guardians as made available under any other state or federal law, including Section 504 of the Federal Rehabilitation Act, the Federal Americans with Disabilities Act of 1990 and the Federal Individuals with Disabilities Education Act. [6.12.11.14 NMAC – N, 11/26/2019]

HISTORY OF 6.12.11 NMAC: [RESERVED]

Table of Conflicting Defined Terms

Defined Term	Safe Schools for All Students Act	Proposed Rule
Diabetes	"Diabetes" means type one or type two diabetes Mellitus, complications related to diabetes mellitus, or prediabetes.	"Diabetes" means a metabolic disorder of type one or type two diabetes mellitus, complications related to diabetes mellitus, or prediabetes.
Diabetes medical management plan	"Diabetes medical management plan" means a document that a student's personal health care practitioner and parent or guardian develops that sets out the health services that the student needs at school and that is signed by the student's health care practitioner and parent or guardian.	"Diabetes medical management plan" means a document developed and signed by a student's personal health care practitioner and parent or guardian describes the health services a student needs at school.
School	"School" means an elementary, secondary, middle, junior high or high school or any combination of those, including a public school, state-chartered or locally chartered charter school or private school that students attend in person.	"School" means a public school, including a charter school, or private school that students attend in person.

Source: LESC Files