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KNOW THE LAW ABOUT GIVING MEDICATIONS AND INCIDENTAL MEDICAL SERVICES IN LICENSED CHILD CARE IN CALIFORNIA

Knowing the Law about when and how to give medication is part of offering good quality, non-discriminatory child care.

Children may need medication to treat a temporary condition or symptoms, such as antibiotics or over the counter pain medicine for a non-contagious infection. Children with disabilities may have an ongoing need for medication while in child care. For example, a child with diabetes may need to follow a diabetes medical management plan that includes blood glucose monitoring and insulin injections. Some children with disabilities may not need medication every day, but still rely on the availability of emergency medication, such as an EpiPen® injection in an allergic emergency.

The California Department of Social Services, Community Care Licensing Division ("Licensing") calls medications that a child needs because of a disability, "Incidental Medical Services" ("IMS"). Licensing regulations **allow** non-medical staff in licensed California child care programs to administer both prescription and non-prescription medications, including IMS. Disability rights laws **require** child care programs to administer IMS, unless there are facts specific to a specific child's needs, child care program setting, and available resources that make administering the IMS unreasonable. **Licensing's Provider Information Notice ("PIN") 2022-02-CCP offers information and best practices for administering IMS**.

1. Can a child care program's non-medical staff administer medication?

Yes. In California, non-medical staff in both child care centers and family child care homes can administer medication.

State-licensed child care providers may worry about whether their license allows them to administer medications to children in their care. California regulations allow non-medical staff to administer medication if they follow certain safe handling and other requirements.[1] The requirements include that the staff have written authorization and instructions from the child's representative, and that the instructions are consistent with the label directions as prescribed by the child's physician, for a prescription medication, and with the product label directions on the container, for a nonprescription medication.

California law and Licensing guidance also authorize non-medical staff to administer **blood glucose monitoring and inhaled medication**; any other medication **necessary to carry out a physician's medical orders**; and any medication needed **in case of emergency**. The law and guidance include requirements and best practices for doing so.

The California Health and Safety Code authorizes and outlines requirements for child care staff to administer **blood glucose testing** and **inhaled medications**.[2] A staff person who administers blood glucose testing must register with the State Department of Health Services no later than 30 days after beginning to do so.[3] Form LIC 9222 provides guidance on how to register. A Form LIC 9166 must be completed for each staff member who administers inhaled medication.

California law allows non-medical staff **to carry out a physician's medical orders for a patient**.[4] Licensing's PIN 2022-02-CCP confirms that this rule authorizes services including but not limited to **gastronomy tube feeding and care** and **insulin administration**.

California law also permits IMS **in the case of emergency**.[5] Licensing PIN 2022-02-CCP confirms that this includes but is not limited to emergency administration of **glucagon, epinephrine (e.g. Epi-Pen®), and anti-seizure medication (e.g. Diastat®).**

2. Where can I find general information about how licensed child care programs should handle prescription and non-prescription medications?

California Code of Regulations, title 22, section 101226(e) outlines Licensing requirements for handling medication.

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[1] *See* Cal. Code Regs., Tit. 22 §101226(e) (outlining the safe handling and other requirements for child care centers when administering medication).
[2] Cal. Health & Safety Code §§1596.797 (blood glucose testing) and 1596.798 (inhaled medications).
[3] Cal. Business and Prof. Code § 1241(c).
[4] Cal. Business and Prof. Code section 2727(e). *See also*, *American Nurses Association v. Torlakson*, 57 Cal. 4th. 570 (2013)(holding that Business and Professions Code section 2727(e) exempts non-medical school staff carrying out physicians' medical orders to provide diabetes care from laws prohibiting the unauthorized practice of nursing).
[5] Cal. Business and Prof. Code §2058(a).

Licensing PIN-2022-02 recommends that child care providers find additional resources through the National Resource Center for Health and Safety in Child Care and Early Education's National Health and Safety Performance Standards ("Caring for Our Children"); the University of California, San Francisco's California Child Care Health Program; and, the U.S. Food and Drug Administration.

Caring for Our Children includes performance standards for Medication Administration.

The California Child Care Health Program offers practical information and advice about Medication Administration.

3. Can a child care program choose to have a general policy not to administer medication?

A child care program can have a general policy that medication should be given at home, whenever possible. However, **it cannot apply that general policy in a way that excludes a child because of the child's disabilities.**

Licensing regulations about medication safe handling confusingly say that they apply "where the licensee *chooses* to handle medications."[6] However, child care programs *cannot* choose *not* to handle medication in situations where separate rules require the child care program to handle medication.

Separate, federal and state disability rights laws require child care programs to handle medication to prevent discrimination against children with disabilities. These laws define discrimination to include refusing to make reasonable changes to policies and practices that would otherwise prevent a child with disabilities from participating on an equal basis.[7] These include medication policies and practices. **A child care program cannot rely on a general policy of not providing certain medications, to refuse IMS to a child who needs it because of a disability.** For such a child, the program **must** modify policies and practices to meet the child's IMS needs so that the child may fully participate, unless doing so would be an "undue burden," fundamentally alter the nature of the program, or result in a direct threat to the health and safety of others in the program.[8]

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[6] Cal. Code Regs. Tit. 22, section 101226(e)(emphasis added).

[7] Title III of the federal Americans with Disabilities Act makes it illegal for "public accommodations," which include child care facilities, to discriminate against children with disabilities. 42 U.S.C. § 12181(7)(K) (day care centers and other social service center establishments are public accommodations) and 42 U.S.C. § 12182(a) (it is illegal for public accommodations to discriminate against individuals on the basis of disability). California's Unruh Civil Right Act and Disabled Persons Act incorporate and add to these protections, including by imposing damages on public accommodations that violate them. Cal. Civ. Code §§ 51 (f), 52(a), 54(c) and 54.3(a).

[8] *See* 42 U.S.C. §§ 12182(b)(2)(A)(i)(prohibiting use of eligibility criteria that tend to screen out people with disabilities); 12182(b)(2)(A)(ii)(requiring reasonable modifications to policies, practices, and procedures, unless the public accommodation can show that making them would fundamentally alter the nature of its services); 12182(b)(3)(ADA does not require inclusion of person with disabilities if it would result in a "direct" threat to the health and safety of others).

The law defines disability as a physical or mental impairment that substantially limits one or more major life activity, or having a history of or being regarded as having such an impairment.[9] Diabetes, seizure disorders, and life-threatening allergies are examples of relatively common childhood disabilities that may require a child care provider to give a child IMS. They are not exclusive examples.

For more information about including children with disabilities in child care programs, see Child Care Law Center's Know the Law about the Americans with Disabilities Act ("ADA") and Child Care in California.

The U.S. Department of Justice's Civil Rights Division, Disability Rights Section ("DOJ") is the federal agency responsible for enforcing the ADA. It publishes a resource called, Commonly Asked Questions About Child Care Centers and the Americans with Disabilities Act.

4. What does Licensing expect of a child care program that administers IMS?

On February 4, 2022, Licensing issued Provider Information Notice ("PIN") PIN 22-02-CCP, which provides information and best practices for administering IMS in licensed Family Child Care Homes (FCCHs) and Child Care Centers (CCCs).

Licensed child care programs serving children who need IMS should review PIN 22-02-CCP. What follows is a shorter version of information extracted from the PIN.

If the IMS is *blood glucose testing or inhaled medication*, the licensed child care program must follow the requirements specified in the Health and Safety Code and Business and Professions Code. (See Q. 1, above.)

For *other IMS*, PIN 22-02-CCP **recommends and elaborates on the following as best practices.**

FOR FCCHs:

- Obtain authorization, medical orders, and IMS supplies from the child's authorized representative:
  - **Written authorization** for each staff who will administer the IMS
  - **Medical orders** from the child's physician describing the medical need, the IMS, that it can be safely provided by a layperson, a description of the training needed and who can provide the training, and any symptoms to watch for
  - **Medication, equipment and supplies** necessary to administer the IMS

- Ensure the presence of trained staff:
  - **Obtain the specified training** for any staff who will administer the IMS
  - **Keep verification of the training** in staff personnel records.

[9] *See* 42 U.S.C. § 12102(1)(defining disability for the purpose of the ADA).

    - **Plan for the presence of at least one trained staff member** when the child is in care, onsite and during offsite activities.
    - **Communicate** with substitute/new staff about the IMS needs.

- Follow safe storage and other precautions
    - **Storage** of IMS and related supplies in a safe place inaccessible to children
    - **Follow standard precautions** such as wearing gloves, washing hands, using safe disposal practices for sharps, and cleaning and disinfecting surfaces that may have been contaminated with body fluids.
    - **Record** and provide daily information to the child's representative about when IMS has been administered.
    - **Establish Procedures** for accepting, maintaining current supplies of, and returning unused IMS

- Meet additional requirements for Emergency IMS
    - Call 911
    - Notify the child's authorized representative as soon as possible
    - Submit an unusual incident report (LIC 624) to Licensing

- Write an "IMS Plan"
    - An IMS Plan is a document notifying Licensing that the facility is providing IMS
    - The IMS Plan should explain the:
        - Types of IMS the facility is providing
        - Plan for ensuring an adequate number of designated, trained staff
    - Submit a copy to Licensing, and keep a copy at the facility and have all staff know where it is.
    - The facility should report any changes to the IMS Plan to their Licensing Program Analyst or Regional Office

FOR CCCs:

PIN 22-02-CCP identifies best practices in terms similar to those it applies to FCCHs:

- Obtain authorization, medical orders, and IMS supplies from the child's authorized representative
- Ensure the presence of trained staff
- Follow safe storage and other precautions
- Meet additional requirements for Emergency IMS
- Write an "IMS Plan"

In applying these best practices, CCCs that provide IMS must follow the **Health-Related Services requirements** in Title 22, section 101216; **Reporting requirements** in section 101212; and **Disaster and Mass Casualty Plan requirements** in section 101174. PIN 22-02-CCP cross-references Licensing's recommended best practices to these requirements.

In addition, Licensing expects CCCs to include IMS Plan information in their Plan of Operation required by Title 22, section 101173, and to act accordingly in reporting changes to the IMS Plan.[10]

5. What if I am experiencing difficulties in providing IMS?

If you are a licensed child care provider and Community Care Licensing is preventing you from administering medications to a child in your care who needs them because of a disability, please contact your local Licensing Regional Office.

If you are a parent of a child with disabilities and your child care program refuses to administer IMS, you may file a complaint for discrimination with the Department of Justice.

For more information, please contact the Child Care Law Center by phone at, (415) 558-8005 ext. 101 or through our website, here.

[10] Cal. Code Regs. Tit. 22, §101212(e)(4)(including reporting changes to Plan of Operation among a center's Reporting Requirements).