

California Department of Education (<http://www.cde.ca.gov/sp/se/ac/medmonitor.asp>)
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CALIFORNIA
DEPARTMENT OF
EDUCATION

TOM TORLAKSON

STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

September 13, 2011

Dear County and District Superintendents, Special Education Local Plan Area Directors, Special Education Administrators at County Offices of Education, Charter School Administrators, Principals, and Nonpublic School Directors:

ASSEMBLY BILL 114: MEDICATION MONITORING

Assembly Bill 114 made significant changes to Chapter 26.5 of the California *Government Code* (GC) regarding the provision of mental health services to students with disabilities. As a result of AB 114, local educational agencies (LEAs) are responsible for ensuring the provision of related services, including some services previously provided by county mental health agencies (CMHAs) under Chapter 26.5 of the GC. As LEAs implement this transition, and as a result of changes in state statute stemming from AB 114, the Individuals with Disabilities Education Act (IDEA) serves as the statutory framework for the provision of related services.

This document is intended to assist LEAs in facilitating the transition of certain services formerly provided by CMHAs under state law prior to AB 114, to the LEAs providing services authorized by the IDEA and complying with the requirements therein. To the extent that service provision requirements under the IDEA differ from those formerly specified in Chapter 26.5 of the GC prior to AB 114, this document is meant to assist in making that distinction. However, it must be emphasized that a blanket restriction on any particular service would be contradictory to the IDEA. The individualized education program (IEP) team should develop the IEP based on the child's unique needs and include supportive services that are necessary to assist the child in benefitting from special education. Therefore, the IEP team decision about a specific child's eligibility for services under the IDEA must remain the most critical factor.

The changes to Chapter 26.5 of the GC, as outlined in AB 114, resulted in the removal of statutory authority for many of the implementing regulations found in Division 9 of Title 2 of the *California Code of Regulations* (CCR). "Medication Monitoring" was a service previously provided by CMHAs and authorized by Section 60020(f) of Division 9 of Title 2 of the CCR, prior to AB 114:

2 CCR §60020(f):

(f) "Medication monitoring" includes all medication support services with the exception of the medications or biologicals themselves and laboratory work. Medication support services include prescribing, administering, dispensing and monitoring of psychiatric medications or biologicals necessary to alleviate the symptoms of mental illness.

As LEAs assume responsibility for the provision of related services, many questions have been raised about how and if 'medication monitoring', as previously defined in 2 CCR §60020(f), fits into the IDEA statutory requirements for related service provision.

Medical Services Under IDEA

The definition of "related services" found in Section 300.34(a) of Title 34 of the *Code of Federal Regulations* (CFR) includes medical services for diagnostic or evaluation purposes. "Medical services" is defined in Section 300.34(c)(5) of Title 34 of the CFR:

"Medical services means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services."

Thus, in general, medical services are required under the IDEA if they are necessary for the purpose of diagnosis or evaluation. However, medical services provided by a licensed physician for other purposes, such as treatment, may not be a related service required by the IDEA. Furthermore, services exclusively provided by a licensed physician may be subject to what is widely known as the medical exclusion of the IDEA. *Irving Independent School District v. Tatro*, 468 U.S. 883 (1984) developed a "bright line" rule that established that services provided by a physician, other than for diagnostic or evaluation purposes, are subject to the medical exclusion of the IDEA. This "bright line" rule was further supported by *Cedar Rapids*

Community School District v. Garret F., 526 U.S. 66 (1999). However, services that can be provided in the school setting by a nurse or qualified layperson are not subject to the medical exclusion.

The definition of "related services" in the IDEA includes school health services and school nurse services. Section 300.34(c) (13) of Title 34 of the *CFR* defines these services as follows:

School health services and school nurse services means health services that are designed to enable a child with a disability to receive a free appropriate public education (FAPE) as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

Therefore, as LEAs consider "medication monitoring" as defined in 2 *CCR* §60020(f), it is recommended they consider the various components of that service definition to establish whether or not a particular service activity may be required under the IDEA. In addition, LEAs should consider which personnel are qualified to perform that activity, along with the child's established need for the service, pursuant to his/her IEP. For example, prescribing psychiatric medications is a component of 'medication monitoring' under 2 *CCR* §60020(f). To the extent that only a physician or psychiatrist can perform that service activity, it appears that component would fall under the medical exclusion of the IDEA, which would relieve a school district of the responsibility to provide that particular service. However, when considering a supportive service such as the administration of medication (also included in the former definition of "medication monitoring" under 2 *CCR* §60020(f)), that service activity may fall under the IDEA definition of "school health services and school nurse services," depending on the child's individualized need for the service and the ability of school personnel to provide the service (meaning within their respective scope of practice). For more information and further guidance on medication administration, please visit the CDE Medication Administration Web page at: <http://www.cde.ca.gov/ls/he/hn/medication.asp>.

If you have any questions regarding this subject, please contact the Policy and Program Services Unit of the Special Education Division by phone at 916-323-2409.

Sincerely,

Original signed by Fred Balcom. Hard copy of the signed document is available by contacting the Special Education Division's Director's Office at 916-445-4602.

Fred Balcom, Director
Special Education Division

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Last Reviewed: Friday, September 23, 2011