

# Overview of HB22-1260: Access to Medically Necessary Services

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# Roadmap

1. Pre-HB22-1260
2. HB22-1260 Legislative Declaration
3. HB22-1260 Policy Requirements
4. HB22-1260 Required Reports to CDE
5. Paths to Compliance
6. Questions

# Pre-HB22-1260



## Pre-HB22-1260

- Schools consider parent requests for medically necessary services in the context of an IEP or Section 504 meeting.
- Teams consider whether the requested service is necessary for the student to receive FAPE.
- Many students receive services of a BCBA/RBT in school via IEP team process, with those services provided by AU.
- Schools coordinate observations and collaborate with outside private service providers.

## Pre-HB22-1260

Since not required for FAPE, most schools deny parent requests to allow outside service providers to come into the school, citing:

- Safety concerns/need for background checks
- Lack of supervision/student alone with service provider
- Lack of space (or providing free space to private entity)
- Not educationally necessary; home behaviors not observed in school
- Interference with student's access to gen ed curriculum/instruction and special education services (FAPE)
- Liability/insurance concerns
- Confidentiality concerns/FERPA (not “school official”)

# Pre-HB22-1260

Common scenario of medically necessary services received in schools are those necessary for the child to attend school, such as a Private Duty Nurse –

- Family's private duty nurse provides services at home and school, schools maximize resources by defraying costs and student has consistent care provider.
- However, if private duty nurse wasn't available, school would be obligated to provide the necessary health services to access education (though these services might not be provided by a nurse – LPN, Health Room Para).
- Parents, District and Private Duty Nurse sign contract covering background checks, insurance, etc.

## Pre-HB22-1260

Schools operate under the legal framework of the IDEA and Section 504.

- The IDEA requires public schools to address the educational needs of students with disabilities; its purpose is “not to address purely social, emotional, or medical needs.”  
*Jefferson Cty Sch. Dist. R-1 v. Elizabeth E*, 702 F.3d 1227, 1244 (10<sup>th</sup> Cir. 2012)

## Pre-HB22-1260

- Schools are not required under Section 504 or the ADA to allow private behavior therapy in school where the therapy is not necessary for the child to enjoy meaningful access to public education. *O.A. v. Orcutt Union Sch. Dist.*, 121 LRP 42764 (C.D. Ca. Dec. 27, 2021)
- Although medically necessary and insurance-funded, ABA therapy was not needed at school to receive educational benefit. *Does v. Key* (E.D.Ark. Nov. 19, 2021)



# HB22-1260 Legislative Declaration



# HB22-1260 Legislative Declaration

Path to the final bill –

- Original bill established “collaborative care team” to determine whether to allow reasonable accommodation of medically necessary services during school hours.
- 4+ hours of live testimony before the House Education Committee, written submissions – by BCBAs, AUs, parents, teachers.
- HB22-1260 signed by the Governor on June 2, 2022 with substantially reduced obligations on the AU.

# HB22-1260 Legislative Declaration

The Legislative Declaration notes:

- Access to medically necessary services in the school setting has lagged as compared to other settings;
- ABA is a medically necessary service that may need to be delivered in the school setting for students with ASD to generalize functional skills across environments, and health insurance plans must cover these treatments.

# HB22-1260 Legislative Declaration

The Legislative Declaration notes:

- Lack of access to medically necessary services in schools has detrimental effects on children.
- Despite provision of special education and related services, children have unmet medical needs in the school setting.
- These unmet needs may be met by allowing access to services funded by third parties, causing no financial burden on public schools and reducing long-term costs to the state.
- No family should have to choose between a child attending public school or receiving access to medically necessary services.

# HB22-1260 Policy Requirements



# HB22-1260 Policy Requirements

No later than **July 1, 2023**, each AU shall adopt a policy.

The policy must address:

“how a student who has a prescription from a qualified health-care provider for **medically necessary treatment** receives such treatment in the school setting as required by applicable federal and state laws, including [Section 504 and the ADA].”

# HB22-1260 Policy Requirements

Definition of **Medically Necessary Treatment**:

Treatment recommended or ordered by a Colorado licensed health-care provider acting within the scope of the health-care provider's license.

# HB22-1260 Policy Requirements

The policy must include three things:

1. Notice to the parent of the student that Section 504 and the ADA “provide rights and protections to students to access medically necessary treatment required by the student to have meaningful access to the benefits of a public education, or to attend school without risks to the student’s health or safety due to the student’s disabling medical condition.”



# HB22-1260 Policy Requirements

2. Address the process in which a private health-care specialist may observe the student in the school setting, collaborate with instructional personnel in the school setting, and provide medically necessary treatment in the school setting as required by Section 504 and the ADA.

# HB22-1260 Policy Requirements

3. Provide notice of a student's right to appeal the decision of an Administrative Unit concerning access to medically necessary treatment in the school setting.

# HB22-1260 Policy Requirements

The policy must be publicly available on the AU's website and available to parent upon request.

# HB22-1260 Reports to CDE



# HB22-1260 Reports to CDE

Beginning July 1, 2024, and each July 1 thereafter, each AU shall compile and provide to CDE:

- The total number of requests for access to a student by a private health-care specialist pursuant to this law, and
- whether the access was authorized or denied.

# HB22-1260 Reports to CDE

Beginning January 2025, and each January thereafter, CDE will:

- make the information reported by the AUs available on CDE's website, and
- report the information to the House and Senate Education Committees.

# Paths to Compliance



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Expect the Consortium and CASB to collaborate on creation of model policy, to be released spring 2023.



# Paths to Compliance

- Policy must provide notice of rights – reference the statutorily-required language in (2)(b)(I):

Section 504 and ADA “provide rights and protections to students to access medically necessary treatment required by the student to have meaningful access to the benefits of a public education, or to attend school without risks to the student’s health or safety due to the student’s disabling medical condition”.

# Paths to Compliance

- Policy must address process for private provider to observe student in school setting – might include:
  - Need parental consent/ROI
  - Maintain integrity of student's instructional program, both in general and special education settings
  - Maintain integrity of learning process for all students and not disrupt classroom routine
  - Private therapists are not permitted to provide services (i.e., work directly with students)
  - Reference to Visitors in the Schools policy

# Paths to Compliance

- Policy must address process to collaborate with instructional personnel – might include:
  - Need parental consent/ROI
  - Collaboration activities may include sharing of information and strategies between private providers and school teams, and attending problem-solving/IEP/Section 504 meetings
  - Collaboration must not result in the replacement of private services for special education services
  - If private therapist wishes to model technique or strategy, arrangements can be made to provide training outside of school day

# Paths to Compliance

- Policy must include process to provide medically necessary treatment in the school setting as required by Section 504 and the ADA – might include:
  - Bring request to the IEP or Section 504 team, or if no existing team, then to the Section 504 Coordinator
  - Provide copy of this new policy to parents

# Paths to Compliance

- Policy must include an appeal process
  - Consider referencing existing Section 504 appeal process found in Policy AC-R (Nondiscrimination Complaint Process)

# Paths to Compliance

The policy may also address other concerns of the AU such as:

- Safety (background checks, licensure, supervision, etc.)
- Liability (insurance)
- Avoid disruption to the learning environment of all students
- Avoid disruption to the student's access to special education services
- Confidentiality issues

# Paths to Compliance

As compliant policy is developed – plan for implementation!

How will the policy be consistently implemented across the organization?

- Training
  - Which staff (school administrators, instructional staff and other service providers) must understand the policy requirements?
  - Staff must know what to do if parent requests observation by or collaboration with outside provider or the provision of medically necessary services in school.

# Paths to Compliance

How will you collect the necessary data to report to CDE?

- How will IEP and Section 504 teams document the parent request “for access to a student by a private health-care specialist” pursuant to this law, and whether the request was authorized or denied?
- How will this data be collected?



# Paths to Compliance

How will you collect the necessary data to report to CDE?

- Who will be responsible for review and reporting of this data?
- Why is this data being collected?
- What will this data show?
- How can AUs prepare for reintroduction of the bill

# Paths to Compliance

Until the policy is developed, how should you respond to these requests?

- Explain the policy will be in place by the July 1, 2023 deadline
- Discuss the request in the IEP/Section 504 meeting
- Document the discussion and response in PWN
- Provide procedural rights

# Questions?

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