



# CHILD CARE LAW CENTER

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## **Know the Law About Giving Medications to Children in Licensed Child Care in California**

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### **Introduction**

An increasing number of children attending child care are taking medications. They may need medication on a regular basis, or they may take medication “as needed” or for a temporary illness. Non-medical staff in licensed child care programs in California are allowed to give both prescription and non-prescription medications to children so that they may attend child care. This “Know the Law” describes the rules and procedures for providing these Incidental Medical Services (IMS) in child care and preschool settings.

#### **1. Can non-medical staff in a licensed child care program give medication to a child in their care?**

**Yes.** Children with disabilities or special health care needs may need to receive medications while in child care. For example, a child with asthma may need an inhaler, a child with diabetes may need insulin, or a child with epilepsy may need Diastat. Some children may need emergency medication, like an epi-pen for an allergic reaction. Other children may have a temporary need for medication, such as antibiotics for an infection. Child care staff can learn to safely give medications to children. These are known as Incidental Medical Services or “IMS.”

Child care providers licensed by the state may worry about whether their license allows them to give medications. Fortunately, California law and recent guidance from the Department of Social Services Child Care Licensing Program (“Licensing”) makes it clear that they *may* provide Incidental Medical Services,<sup>1</sup> so long as they follow certain procedures, explained below.

#### **2. Can a child care program choose whether or not to administer disability-related medication to a child?**

**No.** Disability rights laws prohibit child care providers from excluding children solely because they have a disability-related need for medication. For a child with a disability (and diabetes, for example, meets the definition of disability) a child care center, home provider, or after-school program must take steps to “reasonably accommodate” the child’s medical needs so that the child may fully participate.<sup>2</sup>

In 2015, Community Care Licensing issued guidance in its [Child Care Evaluator Manual, Section 102417](#), which lays out the conditions and procedures for giving Incidental Medical Services when a family child care provider “chooses” to give medication. Similar rules for child care centers appear in the [Child Care Evaluator Manual, Section 101226](#).<sup>3</sup>

However, it is not completely a choice of the child care provider to decide whether she or he will provide this accommodation to a child’s disability. **A child’s need for medication is generally not a reason that a provider can exclude him or her from licensed child care.**<sup>4</sup>

### 3. What steps must a child care program take to meet Community Care Licensing Requirements for giving medication?

Each child must have his or her own *individualized*, written plan for providing Incidental Medical Services. The child care provider, the family, and the physician must work together to decide whether (and how) the provider can give medication to that *individual* child. The *individual* plan should be kept in the child’s file, but does not have to be submitted to the Community Care Licensing Division. Community Care Licensing is not involved in making the plan, and cannot prohibit a child care provider from giving a child medication.

Child care programs also must keep complete records of the necessary documents to support giving IMS to a particular child in that child’s record (see Q. 4 below).

### 4. What documents must be maintained in the child’s record?

1. Written **consent from the child’s parent or authorized representative** that the child may receive specified IMS at the facility, and the names of all child care staff who will be trained to give the medication;
2. Written **medical orders from the child’s physician**, which includes:
  - A) a statement that a non-medical person may provide the IMS;
  - B) if medication is prescribed, the name of the medication, method, amount, and time schedule for administering the medication; and
  - C) a description of the required training for all staff who will be giving the medication.
3. Written verification that the **designated licensee or staff** has completed the training required by the physician’s medical orders, and that at least one of the designated and trained staffpersons will be at the facility at all times that the child needing services is in care.

Child care providers or programs then submit a Plan of Operation to Provide Incidental Medical Services to Community Care Licensing. The provider must revise the Plan whenever there are changes to the services provided.

## 5. When does a child care program submit a Plan of Operation to provide Incidental Medical Services?

In addition to *individualized* plans for children who require IMS, a child care program that cares for children who need IMS shall identify those services in its general Plan of Operation that it submits to the Community Care Licensing Division.

A facility applying for a license should include the IMS information in their Plan submitted at the time of application. Currently licensed facilities must submit a revised Plan of Operation for approval at the time that they begin to provide IMS to children in their care.

## 6. What information must be included in the Plan of Operation?

The Plan describes the facility's IMS policies and procedures to ensure the proper safeguards are in place. **Some** of the topics to be covered in the Plan are:

- Types of Incidental Medical Services to be provided;
- Records to be obtained and maintained, such as permission from the parental/authorized representative to provide the IMS; written instructions from the child's physician; verification of staff training; how you will keep records of the medication or service provided;
- Plan for safe storage of medications and equipment/supplies;
- Training requirements, including how to administer medication/service, who will provide the training and what to do in emergencies;
- How you will ensure adequate staffing to provide IMS to all children who need it;
- Plan for ensuring proper safety and hygiene procedures;
- Plan for transporting medication, equipment, and supplies with child(ren) to ensure IMS are not interrupted during field trips or when there is a disaster; and
- Plan for reporting any serious incidents to the parent/guardian and appropriate authorities.

For specific information on the topics that should be included in the IMS Plan of Operation for child care centers, see [Child Care Evaluator Manual, Section 101173](#) (Plan of Operation). Family child care providers must also include the information listed above in the Plan they submit to Licensing for Providing Incidental Medical Services. [Child Care Evaluator Manual, Section 102417](#).

If you think that Community Care Licensing is preventing you from administering medications to a child in your care who needs them, please contact your local [Licensing Regional Office](#) immediately. If the situation isn't resolved, contact Community Care Licensing headquarters or the Child Care Law Center.

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**This publication is intended to provide general information** about the topic covered. It is made available with the understanding that the Child Care Law Center is not engaged in rendering legal or other professional advice. We believe it is current as of September 1, 2017 but the law changes often. If you need legal advice, you should consult an attorney who can specifically advise or represent you.

For more on Child Care Law Center’s efforts to help children with disabilities obtain and keep equal access to high quality child care, please visit our website at: <http://childcarelaw.org/what-we-do/equal-access/> or e-mail us with a specific question or problem at [intake@childcarelaw.org](mailto:intake@childcarelaw.org).

### Endnotes

These endnotes provide legal citations for the information above. Do not hesitate to look up the law and know your rights. Visit your local law library to look up the laws that apply to you, and ask the reference librarian for help if you are having trouble understanding these citations.

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<sup>1</sup> *American Nurses Association v. Torlakson*, 57 Cal. 4<sup>th</sup> 570 (2013) clarified that non-medical staff in California can administer “Incidental Medical Services.” The California Day Care Facilities Act describes two specific Incidental Medical Services that may be provided in both family day care homes and child care centers -- blood glucose testing and inhaled medication. Cal. Health & Saf. Code §§ 1596.797 and 1596.798.

<sup>2</sup> Title III of The 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 12182 (a) (it is illegal for public accommodations to discriminate against individuals on the basis of disability). California law also protects against disability discrimination. California Unruh Civil Rights Act and California Disabled Persons Act. Cal. Civ. Code §§ 51 *et seq.* and 54 *et seq.*

<sup>3</sup> The policy on administering Incidental Medical Services in child care settings went into effect in July 2015 and Licensing has adopted procedures for the safe, healthy administration of medications in child care settings in its Child Care Licensing Division Child Care Evaluator Manual, Sections 102417 and 101226. These policies are available on the Community Care Licensing Division’s website at <http://cclcd.ca.gov/res/pdf/FCCH.pdf> (for family child care homes) and <http://cclcd.ca.gov/res/pdf/ChildCareCenters.pdf> (for child care centers).

<sup>4</sup> U.S. Department of Justice, Civil Rights Division, Disability Rights Section, “COMMONLY ASKED QUESTIONS ABOUT CHILD CARE CENTERS AND THE AMERICANS WITH DISABILITIES ACT,” March 2017, at <https://www.ada.gov/childqanda.htm>. See also, Cal. Dept. of Social Services, Child Care Licensing Division, Child Care Licensing Update, Spring 2016, at <http://cclcd.ca.gov/res/pdf/CCSpring2016.pdf>. “Disability laws require a child care facility to undertake an individualized assessment of a situation if the child care facility receives a request to provide Incidental Medical Services as an accommodation to a child with a disability.”