



Legal Rights of Children with Diabetes in the Childcare Setting

Jennifer Sherman

Legal Advocacy Fellow, American Diabetes Association

Legal Rights of Children with Diabetes in the Childcare Setting

TABLE OF CONTENTS

I. Executive Summary	3
II. Guidance from the American Diabetes Association on Children with Diabetes in Childcare Settings	3
III. Science and Medicine of Diabetes	4
a. Types.....	4
b. Hypoglycemia.....	4
c. Hyperglycemia.....	5
IV. Legal Protections for Children in Childcare Settings	5
a. Overview.....	5
b. Federal Law Protections.....	6
c. State Law	12
d. Legal Procedures for Enforcing the Rights of a Child with Diabetes in the Childcare Setting	15
V. Guidance for Families, Childcare Program, and Health Care Providers to Help Children with Diabetes Be Able to Fully and Safely Participate in the Childcare Setting	16
VI. Recommendations to Clarify and Strengthen the Rights of Children with Diabetes to Fully and Safely Participate in the Childcare Setting	19
a. Clarification in Federal Regulatory Guidance	19
b. Provide Diabetes-Specific Guidance in State Regulations on Childcare Provider Responsibilities	19
c. Government Agencies Should Pursue Enforcement Actions Against Childcare Providers Who Exclude or Discriminate Against Children with Diabetes	20

Appendix A: 50 state survey

Appendix B: Delaware Diabetes Management Regulation

I. Executive Summary

Children with diabetes have legal rights that protect them from discrimination in the childcare setting. Even with these protections, however, families may face challenges as their child with diabetes prepares to enter childcare or is diagnosed with diabetes while enrolled in a childcare program. Families may be rejected from several childcare programs because their child has diabetes, kicked out of their childcare program once the diabetes diagnosis is disclosed, or required to come to the childcare center to administer medication.

It is essential to enforce the rights of children with diabetes when it comes to childcare because it is core to family well-being and financial self-sufficiency, equal opportunity, and anti-poverty efforts. By reducing discrimination in the childcare setting, government agencies can ensure children have equal opportunity to learn and grow.

This whitepaper goes over the science and medicine for diabetes, including guidance particularly for children with diabetes in the childcare setting (Section II and III). It also describes the legal landscape for children with diabetes at the federal and state level, including areas where enforcement takes place (Section IV). The paper also discusses the guidance for families, childcare providers, and healthcare providers in ensuring childcare is a safe place for children with diabetes (Section V). Finally, the paper outlines recommendations to clarify and strengthen the rights of children with diabetes in the childcare setting (Section VI).

II. Guidance from the American Diabetes Association on Children with Diabetes in Childcare Settings

The safety, health, and wellbeing of the child as they transition from home to childcare relies on effective collaboration between the child's diabetes health care provider, parents/guardians, and childcare staff. Young children have unique diabetes management needs, as they are dependent on adults for all aspects of their diabetes care.

On October 30, 2023, the American Diabetes Association[®] (ADA) published a statement entitled [The Care of Young Children with Diabetes in the Childcare and Community Settings](#). This statement is one among many that set forth the ADA's clinical diabetes management recommendations and legal requirements as they pertain to different settings. These statements are published in the ADA's *Standards of Care in Diabetes (Standards of Care)*.

Modern guidance regarding the care of children in the childcare setting begins with the basic principle that effective blood glucose (blood sugar) management is important to healthy daily living and decreases long-term diabetes complications. Consistent, individualized insulin therapy is the standard of care for children with insulin-dependent diabetes. The key diabetes management priority for younger children is the prevention, recognition, and treatment of hypoglycemia (low blood glucose) and hyperglycemia (high blood glucose) to keep the child safe and healthy. The childcare program is responsible for making sure staff are available to meet the child's diabetes needs, including the recognition and treatment of hypo- and hyperglycemia, blood glucose monitoring, and insulin and glucagon administration. To clarify individual needs, each child should have a Diabetes Medical Management Plan (DMMP) created by their diabetes

health care provider (in collaboration with the parents/guardians) and shared with the childcare program. The ADA has developed a [model DMMP for childcare](#) that is available for public use. Its statement on [The Care of Young Children with Diabetes in the Childcare and Community Settings](#) outlines the key responsibilities of families, childcare programs, and health care providers, as discussed in Section V of this white paper.

III. Science and Medicine of Diabetes

Diabetes is a chronic health condition where the body's blood glucose (blood sugar) levels are higher than normal resulting from the body's inability to use or store blood glucose for energy.¹ Insulin, a hormone produced by the pancreas, helps glucose in the blood enter the cells in the body for use as energy. In diabetes, insulin is either totally or partially lacking or the body cannot appropriately use insulin—affecting the person's blood glucose levels.

a. Types

Type 1 diabetes

If a person has type 1 diabetes, the pancreas does not produce insulin or makes very little insulin and the person will need insulin treatment to manage their condition. While type 1 diabetes often presents at a young age, it can develop at any age.²

Type 2 diabetes

If a person has type 2 diabetes, either the pancreas does not make enough insulin or can't use the insulin it does produce effectively. Incidence of type 2 diabetes in youth is increasing. Type 2 diabetes is generally managed with healthy eating, active lifestyle, and medication, which may include insulin, other injectable medications, or oral diabetes medicines that help to manage blood glucose levels and avoid long-term medical complications.³

b. Hypoglycemia

Hypoglycemia (low blood glucose) can occur when someone takes too much insulin, does not eat enough carbohydrates to match insulin intake, engages in unplanned physical activity, or illness. Common symptoms include fast heartbeat, shaking, sweating, nervousness or anxiety, irritability or confusion, dizziness, and hunger.⁴ To treat low blood glucose levels, people should consume carbohydrates. The amount of carbohydrates depends on several individual factors, and it is important to follow instructions from a health care provider on how to treat hypoglycemia. If blood glucose is severely low, such that the person is unable to

¹ American Diabetes Association, Common Terms (Last visited April 23, 2024). <https://diabetes.org/about-diabetes/common-terms>

² Centers for Disease Control and Prevention, What is Type 1 Diabetes? (September 5, 2023). <https://www.cdc.gov/diabetes/basics/what-is-type-1-diabetes.html>

³ Centers for Disease Control and Prevention, Type 2 Diabetes (April 18, 2023) <https://www.cdc.gov/diabetes/basics/type2.html>

⁴ Centers for Disease Control and Prevention, Low Blood Sugar (Hypoglycemia) (December 30, 2022) <https://www.cdc.gov/diabetes/basics/low-blood-sugar.html>

consume carbohydrates or otherwise respond, another trained individual, such as childcare staff, should be prepared to administer glucagon.⁵

c. Hyperglycemia

Hyperglycemia (high blood glucose) can be caused by a combination of factors, including being sick, being stressed, eating more than planned, and not getting enough insulin.⁶ Hyperglycemia can result in acute and chronic complications. In extreme cases of hyperglycemia, there is an immediate risk through a condition called diabetic ketoacidosis (DKA). If hyperglycemia is left untreated, it can cause ketones to accumulate in the bloodstream. Ketones are a chemical made by the liver when there is not enough insulin in a person's bloodstream. When too many ketones are produced, they build up and can cause DKA, a very serious condition that can cause coma or even death.⁷ The onset of DKA for children who use insulin pumps is faster because the child is not using long-acting insulin. Hyperglycemia can also cause, over longer periods of time, serious medical complications like long-term vision loss and organ failure.

IV. Legal Protections for Children in Childcare Settings

a. Overview

Federal laws, including the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 (Section 504), prohibit discrimination on the basis of disability. The Individuals with Disabilities Education Act (IDEA) requires public prekindergarten, elementary, and secondary programs to identify children with disabilities and to provide them with a free and appropriate education. There is further strong federal agency emphasis on preventing disability-based discrimination in both private and publicly funded childcare settings. The U.S. Department of Justice (DOJ), responsible for enforcing federal anti-discrimination laws, has stated, "No child with a disability should be unlawfully denied access to a childcare center on the basis of his or her disability. Simply put, no parent should have to worry that his or her child will be discriminated against in this way. . . . [T]he Department [has a] continued commitment to ensuring that children with disabilities enjoy equal access to childcare services."⁸ In addition to these federal law protections, many states have laws that affect childcare providers' duties with respect to the provision of diabetes management and program inclusion for children with diabetes.

Even though federal laws provide protection for children with disabilities (including diabetes), state laws, regulations, or policies and guidelines often determine whether non-clinical

⁵ Centers for Disease Control and Prevention, How to Treat Low Blood Sugar (Hypoglycemia) (December 30, 2022) <https://www.cdc.gov/diabetes/basics/low-blood-sugar-treatment.html>

⁶ Centers for Disease Control and Prevention, Manage Blood Sugar (September 30, 2022) <https://www.cdc.gov/diabetes/managing/manage-blood-sugar.html>.

⁷ *Id.*

⁸ *Justice Department Settles with Child Care Providers to Protect the Rights of Children with Diabetes*, Dep't of Justice Office of Public Affairs, Feb. 3, 2020, available at <https://www.justice.gov/opa/pr/justice-department-settles-child-care-providers-protect-rights-children-diabetes>.

staff in the childcare setting can administer medication, including insulin and glucagon, to a child with diabetes. Some states have specific childcare licensing rules that place requirements on childcare programs to provide care to children with chronic illness, direct how staff must be trained, or specify whether and how medication may be administered to children. Some states' laws require the child's medical provider to give consent for trained non-clinical staff to assist with diabetes management activities, but this is increasingly uncommon.

It is important to note that childcare centers often do not have licensed healthcare providers, which is a different from schools that usually have either part- or full-time nurses on staff. Regardless of local or state law, childcare programs must meet their obligations under *federal* antidiscrimination law, including to reasonably accommodate and prevent wrongful exclusion or discrimination of children with diabetes.

b. Federal Law Protections

i. Americans with Disabilities Act Titles II & III

The Americans with Disabilities Act is a federal law that prohibits discrimination on the basis of disability in employment, state and local government, public accommodations, transportation, and telecommunications. To be protected by the rights set forth in the Americans with Disabilities Act, a person must have a disability or have a relationship or association with an individual with a disability. The Americans with Disabilities Act defines "disability" as a physical impairment that substantially limits one or more major life activities.⁹ Federal law has made clear that diabetes is a physical impairment that substantially limits the operations of the endocrine system, which is a major bodily function.¹⁰ Thus, diabetes is a "disability" under the Americans with Disabilities Act and related federal antidiscrimination law.

Depending on whether a childcare is run by a government entity or a private business, Title II or Title III of the Americans with Disabilities Act may apply. Title II applies to state and local government-operated entities. Title III applies to public accommodations – any entity that owns, operates, or leases a place that is used by the public at large. Religious entities and private clubs are generally exempt from the law. There are some important differences between the two sections of the Americans with Disabilities Act, including the available remedies. Under both sections, however, there are clear legal requirements that the entity must provide reasonable accommodations as necessary to ensure that the person with a disability—for present purposes, the child with diabetes—has meaningful access to the entity's programs, services, and activities.

1. Title II – Publicly Operated Childcare Programs

Title II applies to childcare services provided by government agencies, such as Head Start, publicly-run summer programs, and extended public school day programs.¹¹ Although some childcare centers are run by the government, many complaints about the treatment of

⁹ 42 U.S.C. § 12102; 28 C.F.R. § 36.105

¹⁰ 29 C.F.R. §1630.2(j)(3)(iii)

¹¹ U.S. Department of Justice, Civil Rights Division, *Commonly Asked Questions about Child Care Centers and the Americans with Disabilities Act* (February 28, 2020) <https://www.ada.gov/childqanda.htm>

children with diabetes arise in the private childcare setting and are discussed under the Title III subheading, below.

Title II authorizes private suits for damages, injunctive relief, and attorney's fees. Compensatory damages are available upon a showing of intentional discrimination.

2. Title III – Privately Operated Childcare Programs

Title III of the Americans with Disabilities Act applies to businesses, including nonprofits, that serve the public. Examples are restaurants, hotels, shops, movie theatres, private schools, doctors' offices, and gyms. Privately run childcare centers count as public accommodations and thus fall under Title III.¹² An exception is childcare centers that are actually run by religious entities. If a private entity is only renting out a religious space to hold the childcare, however, Title III may apply.

Remedies for injured parties under Title III are limited to injunctive relief and attorney's fees. The United States Attorney General (through the U.S. DOJ), however, also has the option to join the suit and can request the court to grant additional monetary relief to the plaintiff.¹³

ii. Section 504 – Childcare Programs Receiving Federal Funds or Operated by a Federal Agency

1. Statute

Section 504 of the Rehabilitation Act of 1973 is a federal civil rights law that prohibits discrimination on the basis of disability. It states: "No otherwise qualified individual with a disability in the United States...shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity *receiving Federal financial assistance*" (emphasis added).¹⁴ Therefore, Section 504 is applicable to childcare programs that receive federal funds.

Federal agencies have regulations that enforce Section 504. The U.S. Department of Health and Human Services (HHS) and U.S. Department of Education's 504 regulations are relevant to the childcare setting.¹⁵ At the time of this writing, both sets of regulations are undergoing updates which could better enforce the rights of children with disabilities in these settings.

¹² 42 U.S.C. § 12181(7); 28 C.F.R. § 36.104; U.S. Department of Justice, Civil Rights Division, *Commonly Asked Questions about Child Care Centers and the Americans with Disabilities Act* (February 28, 2020)

<https://www.ada.gov/childqanda.htm>

¹³ 42 U.S.C. § 12188

¹⁴ 29 U.S.C. § 794

¹⁵ 45 CFR 84; 45 CFR 85; 34 CFR 104

2. Case Law

There is minimal case law on children with diabetes in childcare settings. However, a lot of the legal analysis can be the same as Americans with Disabilities Act and Section 504 claims made against school districts. In the landmark case, *M.F. v. NYC Department of Education* (S.D.N.Y., class settlement approved April 21, 2023), Section 504 and Americans with Disabilities Act claims were brought to enforce federal law requirements for New York City public schools to reasonably accommodate children with diabetes. The federal court’s decision in the case is relevant not only to public schools, but public and private childcare settings as well. The court stated that an entity discriminates against a qualified student who has a disability if the services provided to that student, from on-campus activities to field trips and bus transportation, are not equal to or as effective as the services offered to non-disabled students. That equal access could be achieved through reasonable modifications to policies, practices, and procedures.¹⁶

The *M.F.* court held that the New York City public school system had to hire a sufficient number of nurses to serve as a “float pool” to ensure students with diabetes could attend field trips with their peers while also managing their day-to-day diabetes care needs. The court also ordered the city to train school bus drivers and bus attendants in the treatment of hypoglycemia, including the administration of glucagon. These steps, the court determined, were reasonable accommodations that would ensure equal access to field trips and bus services to children with diabetes.¹⁷

These points on training and ensuring adequate staff, among others, can be transferred to the childcare setting. In addition to this landmark settlement and court order, the ADA has successfully advocated on behalf of children in federally funded childcare programs, including the U.S. Army’s system that cares for more than 200,000 children globally.¹⁸ The ADA filed a Section 504 claim against the U.S. Army’s refusal to accommodate children with diabetes in its government-operated childcare programs. The court found the claim moot, but only because the U.S. Army instituted a new policy specifically noting that assistance with carbohydrate counting, insulin administration, and rescue medications like glucagon would be “reasonable accommodations” and established a process to provide such accommodations to children.¹⁹

While federal law is clear that entities must ensure there are sufficient staff trained on basic diabetes management activities so children with diabetes can participate in the entity’s programs, services, and activities, the accommodations sought must be “reasonable.” For example, in *McDavid v. Arthur*, 437 F. Supp. 2d 425 (D. Md. 2006), the court held that the plaintiff’s demand to *guarantee* that a glucagon-trained employee be present at all times at their child’s after-school and summer programs was unreasonable. The program provider had agreed to train multiple employees on glucagon administration to accommodate a child with diabetes. The court declined to mandate a “guarantee” that glucagon-trained staff would always be

¹⁶ *M.F. by and through Ferrer, et al., v. New York City Dep’t of Ed., et al.*, 582 F. Supp. 3d 49 (E.D.N.Y. 2022); Case documents available at diabetes.org/nycstudents

¹⁷ *Id.*

¹⁸ U.S. Army Family and Morale, Welfare and Recreation, Child & Youth Services (Aug. 4, 2022) <https://www.armymwr.com/programs-and-services/cys/child-youth-services>

¹⁹ *Am. Diabetes Ass’n v. United States Dep’t of the Army*, 938 F.3d 1147, 1151 (9th Cir. 2019)

present, noting that on the “unusual occasion” that a glucagon-trained employee could not be present one day, the program could notify the parents to determine how to address the situation. The court held such an arrangement was reasonable and complied with the Americans with Disabilities Act. This case stands for the proposition that reasonable accommodations are not guarantees. What remains essential is that a reasonable accommodation plan is in place, and that the entity has a plan to address situations where provision of the accommodations might be disrupted.

iii. Requirement to Provide Reasonable Accommodations in the Childcare Setting

The Americans with Disabilities Act prohibits a public accommodation from discriminating against an individual on the basis of disability in the full and equal enjoyment of its goods and services.²⁰ In the childcare setting, this requires that “child care providers ... provide children and parents with disabilities with an equal opportunity to participate in the child care center’s programs and services.”²¹ A childcare center must take steps to “reasonably accommodate” the child’s needs so the child may fully participate in the program. The main exception to this provision is if the accommodation would constitute a fundamental alteration to the program, or the child’s presence would pose a direct threat to the health or safety of others.²² This exception cannot be assumed. The childcare center must make an individualized assessment about whether it can meet the particular needs of the child without fundamentally altering its program. In making the assessment, “the caregiver must not react to unfounded preconceptions or stereotypes about what children with disabilities can or cannot do, or how much assistance they may require. Instead, the caregiver should talk to the parents or guardians and any other professionals.”²³

The Americans with Disabilities Act and Section 504 require provision of reasonable accommodations when necessary to provide meaningful access to programs, services, or activities. But the issue remains on what counts as a reasonable accommodation. In the context of childcare services for a young person with diabetes, reasonable accommodations could include:

- Following state procedures to train staff to administer insulin and glucagon
- Monitoring blood glucose levels and assist with the prompt response to out-of-range glucose levels
- Supervising children with diabetes while they monitor glucose levels or use diabetes medical equipment
- Monitoring food consumption
- Counting carbohydrates

²⁰ 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201. Section 504 similarly prohibits a federally funded entity engaging in such discrimination as described above. 29 U.S.C. § 794(a).

²¹ 42 U.S.C. § 12181(7)(K) & § 12182(a).

²² U.S. Department of Justice, Civil Rights Division, *Commonly Asked Questions about Child Care Centers and the Americans with Disabilities Act* (February 28, 2020) <https://www.ada.gov/resources/child-care-centers/>; 42 U.S.C. § 12182(b)(2)(A)(ii); 28 C.F.R. § 36.302

²³ U.S. Department of Justice, Civil Rights Division, *Commonly Asked Questions about Child Care Centers and the Americans with Disabilities Act* (February 28, 2020) <https://www.ada.gov/resources/child-care-centers/>

- Testing for ketones
- Allowing for storage of medications, such as insulin and/or food
- Providing appropriate containers for needles/syringe disposal

The U.S. DOJ cases discussed below demonstrate that these sorts of diabetes-related accommodations—including training non-medical childcare staff to administer insulin and glucagon—are likely to be reasonable accommodations in the childcare setting.

iv. DOJ Enforcement of the Rights of Children with Diabetes in the Childcare Setting Under Federal Law

Over the last two decades, the U.S. DOJ has initiated and resolved numerous complaints against privately-operated childcare, camp, and recreational programs that failed to enroll and reasonably accommodate children with diabetes management needs. Through these cases, the DOJ has affirmed that childcare, camp, and recreational programs are places of public accommodation that must give children with diabetes an equal opportunity to participate. This opportunity should be accompanied by reasonable accommodations when warranted. In one recent statement, the DOJ strongly stated:

No child with a disability should be unlawfully denied access to a child care center on the basis of his or her disability. Simply put, no parent should have to worry that his or her child will be discriminated against in this way. . . . [T]he Department [has a] continued commitment to ensuring that children with disabilities enjoy equal access to child care services.²⁴

Importantly, the DOJ’s cases and settlements make plain that if a qualified health care professional deems it appropriate for a child to be assisted in diabetes management activities by a trained non-clinical staff, such an arrangement very likely constitutes a reasonable accommodation (sometimes referred to as a reasonable “modification”) under the Americans with Disabilities Act.

YMCA, Atlanta, GA

In June 2022, the DOJ reached a settlement with Atlanta YMCA.²⁵ DOJ found that the Atlanta YMCA is a private entity that operates childcare facilities that are places of “public accommodation” within the meaning of Title III. The DOJ also stated that children with diabetes should have an equal opportunity to participate in these after-school programs. Atlanta YMCA violated the Americans with Disabilities Act by denying a child the opportunity to participate in the YMCA’s after-school program because of her diabetes. The YMCA refused to provide daily insulin injections to the child, which left her unable to attend the after-school program. As part of the settlement, the YMCA adopted a non-discrimination policy to ensure Americans with

²⁴ *Justice Department Settles with Child Care Providers to Protect the Rights of Children with Diabetes*, Dep’t of Justice Office of Public Affairs, Feb. 3, 2020, available at <https://www.justice.gov/opa/pr/justice-department-settles-child-care-providers-protect-rights-children-diabetes>.

²⁵ *ADA settlement with Atlanta YMCA ensures equal opportunities for children with diabetes*, U.S. Attorney’s Office, Northern District of Georgia, June 23, 2022, available at <https://www.justice.gov/usao-ndga/pr/ada-settlement-atlanta-ymca-ensures-equal-opportunities-children-diabetes>

Disabilities Act compliance and provide mandatory training for all employees who work in the after-school program. The YMCA was required to pay \$5,000 compensation to the family of the child with diabetes who had been denied reasonable accommodations.

Lil' Einstein's Learning Academy, Bear and Newark, DE; Chesapeake City and Elkton, MD

Another settlement, involving Lil' Einstein's Learning Academy (LELA) in February 2020, went further. It explicitly required evaluating each request for a reasonable modification on an individualized basis, established training of non-clinical childcare staff members to assist with routine diabetes care tasks as needed, and provided for payment of \$25,000 in compensatory damages to families who faced discriminatory conduct against their child with diabetes and a civil penalty of \$2,500.²⁶ Again, the DOJ stated that LELA, as a childcare center, was a place of public accommodation subject to Title III and that it had violated the child's rights by denying her the opportunity to participate in the daycare. It also stated that where a parent and child's physician or other qualified healthcare professional deems it appropriate for the child to be assisted in diabetes care by a nurse or trained non-clinical staff, doing so would be a reasonable modification under the Americans with Disabilities Act.

Community First School Corp., Sunnyvale, CA

Also in February 2020, the DOJ settled with Community First School Corp. (CFS) to end the exclusion of children with type 1 diabetes from its childcare program.²⁷ The settlement included the provision of reasonable accommodations, training of non-clinical childcare staff members to assist with routine diabetes care tasks as needed, and payment of \$15,000 in compensatory damages to aggrieved individuals and a civil penalty of \$2,500. Like the settlements above, the DOJ stated that CFS was subject to Title III and had violated the child's rights by denying her acceptance into the program due to her diabetes. The settlement again states that having a trained non-clinical staff to assist in diabetes care would be a reasonable accommodation for the child under the Americans with Disabilities Act.

Other DOJ settlement agreements have ended exclusionary and discriminatory practices against children with type 1 diabetes, ensured the evaluation of each request for reasonable modification on an individualized basis and/or provided training for both day-to-day and emergency management of diabetes.²⁸ These agreements cover childcare, after school programs, and camp, each with similar legal analysis.

²⁶ Lil' Einstein's Learning Academy Settlement Agreement DJ No. 202-15-83 (2020) https://www.ada.gov/lil_einstein_sa.html

²⁷ Community First School Corp. Settlement Agreement (2020) https://www.ada.gov/community_first_school_sa.html

²⁸ See, e.g., KinderCare Education, LLC Settlement Agreement (2018) https://www.ada.gov/kinder_care_sa.html; Youth and Family Services, Inc. Settlement Agreement (2020) https://www.ada.gov/youth_family_svc_sa.html; Learning Care Group, Inc. Settlement Agreement (2018) https://www.ada.gov/lcg_sa.html; Philadelphia Freedom Valley YMCA-Rocky Run Branch Settlement Agreement (2016) https://www.ada.gov/rocky_run_sa.html; Arlington-Mansfield Area YMCA Settlement Agreement (2016) https://www.ada.gov/arlington_ymca.html; YMCA of the Triangle Settlement Agreement (2016) https://www.ada.gov/ymca_triangle_sa.html; Rainbow River Child Development Center Settlement Agreement (2010) http://www.ada.gov/rainbow_river/rainbow_river_sa.htm; Pine Hills Kiddie Garden, Fort Wayne IN, Settlement Agreement (2009) <http://www.ada.gov/pinehillscare.htm>

c. State Law

i. Anti-Discrimination Laws

Some states have laws that echo federal disability antidiscrimination law and even go further in prohibiting disability discrimination in ways that bolster protection for children with diabetes in a childcare setting. Below are a few examples of states (California, Texas, and Virginia) that have protections that in some respects exceed the federal Americans with Disabilities Act Title III protections. State laws can also limit what may count as a reasonable accommodation, however, by regulating who can administer insulin or glucagon (see Section IV.c.ii on state licensing).

1. California

California law prohibits business establishments from engaging in disability discrimination under the Unruh Civil Rights Act and California Disabled Persons Act.²⁹ Violations of these laws can result in financial liability, including statutorily mandated damage awards as well as up to three times actual damages, and payment of the injured party's attorney's fees. In addition, if a childcare provider receives funding from the state, Govt. Code § 11135 applies, which prohibits any person from being unlawfully denied full and equal access to benefits or subjected to discrimination on the basis of medical condition or disability.

California is among the many states that do not legally require that assistance with insulin administration be done by a doctor, nurse, or other health care provider. In *Am. Nurses Assn. v. Torlakson*, the California Supreme Court ruled that California law permits unlicensed school personnel to administer insulin. The court noted that “the routine administration of insulin outside of hospitals and clinical settings does not require substantial scientific knowledge or technical skill and is, in fact, typically accomplished by the patients themselves, including some children, or by friends and family members.”³⁰ The court recognized that the schools were administering these medications in accordance with physician's written statements and that state law delegates to each student's physician the decision whether insulin may safely and appropriately be administered by unlicensed school personnel. Although this case deals with the public school setting, the basic principle holds across other programs involving children—unlicensed staff can perform diabetes management activities so long as they are trained and following health care provider orders. The California Supreme Court recognized that insulin administration does not require substantial scientific knowledge or technical skill, and therefore can be performed by unlicensed individuals. This position is consistent with the ADA's *Standards of Care* and guidance regarding the treatment of children with diabetes in the childcare, school, and other program settings.³¹

²⁹ Cal. Civ. Code § 5; Cal. Civ. Code § 54

³⁰ 57 Cal. 4th 570, 583 (2013).

³¹ American Diabetes Association, [*Standards of Care in Diabetes 2024*](#); [*Care of Young Children with Diabetes in the Childcare and Community Setting*](#); [*Diabetes Care in the School Setting*](#); [*Helping the Student with Diabetes Succeed: A Guide for School Personnel*](#)

2. Texas

Chapter 121 of the Texas Human Resources Code requires reasonable accommodations. This obligation generally tracks the Americans with Disabilities Act's reasonable modification requirement; however, it differs in remedies. Plaintiffs can recover monetary damages, but no attorney's fees, in cases where a public or private entity violates the state law.³²

3. Virginia

The Virginia Human Rights Act protects all individuals in Virginia from unlawful discrimination because of disability in places of public accommodation.³³ The Office of Civil Rights enforces this law through inquiries into complaints that may be submitted by members of the public.³⁴

Notably, Virginia requires at least two school employees to be trained in the administration of insulin and glucagon in schools with a staff of 10 or more.³⁵ If less than 10, one staff person must be trained. Several states have a similar requirement to train non-clinical school staff. For information on all states, visit the Association's Safe at School Legal Protections website.³⁶ While these statutes focus on the school setting and do not explicitly extend this requirement to childcare programs, the laws implicitly confirm that it is safe, feasible, and reasonable for staff members to receive training and be prepared to assist with a child's diabetes management activities in the childcare setting.

ii. State Licensing

Each state has its own regulations on childcare center licensing. The regulations generally address medication administration, medication handling, and general principles of meeting children's health care needs in the childcare setting. Importantly, federal law requirements must always be met regardless of state laws and regulations.

1. All States Include Medication Administration Regulations for Childcare Licensure

All U.S. states and Washington, DC contain a medication administration section within their regulations or rules for childcare facility licensure. The medication administration section of such state regulations applies generally to prescription and non-prescription medications, as prescription medications, insulin and glucagon are likely covered even if not explicitly mentioned.

³² TX Human Res. Code Tit. 8 Chap. 121 Sec. 121.004.

³³ VA Code § 2.2-3900

³⁴ VA Code § 2.2-520

³⁵ VA Code § 22.1-274

³⁶ American Diabetes Association, Safe at School Legal Protections <https://diabetes.org/advocacy/safe-at-school-state-laws/legal-protections>

There are some states that do explicitly mention insulin in their rules and regulations. The specific mention of insulin allows for a stricter interpretation of the rule and creates more peace of mind for residents whose young children have diabetes.

Iowa and Rhode Island are two states that specifically mention insulin in their rules.

The Rhode Island rule states, “If there are children in the program who have special health care needs, specific health procedures are delivered, where appropriate, by a licensed/certified health professional or a staff person who has been trained to appropriately carry out such procedures.”³⁷ The following section then specifies that “such procedures” includes insulin administration. The inclusion of this definition removes any ambiguity as to whether insulin administration can be delegated.

The Iowa rule states, “If a child needs special medical services (... insulin injections for diabetes...) you must have a written special needs care plan explaining the procedure from the doctor and parent.”³⁸ Again, such definitional language removes any ambiguity and interpretation as to what a “special medical service” may be, offering more explicit protection for children with diabetes.

While almost all states have rules regarding medication administration, approximately eleven states have childcare licensing rules that make medication administration optional for a childcare provider. For example, in Missouri, licensing regulations give the center the option of whether to administer medication or not.³⁹ This means that in certain states, a parent may have difficulty finding a childcare center that already has a medication administration program set up. But importantly, based on federal disability antidiscrimination law, assistance with basic diabetes management, including administration of insulin, is very likely to be a reasonable accommodation that must be provided to a child with diabetes by the childcare provider.

2. Medical Emergency Procedures Under State Licensing Regulations Encompass Glucagon Administration

Glucagon is an emergency medication used to treat severe hypoglycemia. Because of this, the emergency procedures under state licensing regulations encompass glucagon administration.

Most states that have childcare licensing regulations including an emergency section requiring a childcare facility to have a plan in place in case of an emergency. These emergency medication procedures allow for the administration of glucagon, regardless of the regular administration of medication rules. Missouri, for example, has a regulation that states: “The facility shall develop, implement, and maintain policies and procedures for responding to a disaster emergency, including a written plan for: 1. Medical and non-medical emergencies...”,

³⁷ R.I. Gen. Laws § 42-72-5(b)(12) & DCYF Child Care Program Regulations for Licensure § 3(II)(N)(1)

³⁸ 441 IAC 109.10(3) (2023) & 441 IAC 109.9(2) (2023)

³⁹ Mo. Code Regs. Tit. 5 § 25-400.185(3)(A) (2023)

which means a child with diabetes should have a plan in place for if glucagon administration is ever necessary.⁴⁰ Most other states have similar regulations regarding emergency medications.

For a survey of childcare regulations in all 50 states and Washington, DC as of 2023, see Appendix A.

d. Legal Procedures for Enforcing the Rights of a Child with Diabetes in the Childcare Setting

i. OCR, DOJ, and HHS Complaints

At least three federal agencies have complaint procedures that may be available to families who have faced diabetes-related discrimination in the childcare setting. Where the complaint can be filed depends on the law violated.

If a private childcare provider or a provider receiving federal funds does not follow the Americans with Disabilities Act or Section 504, a parent or guardian can file an administrative complaint against the childcare provider through the U.S. DOJ.⁴¹ There is no requirement to exhaust administrative remedies before submitting this complaint.

If a public school district operates the childcare program, a child's rights under Section 504 may be enforced through administrative complaints to the Department of Education's Office for Civil Rights (OCR),⁴² through an impartial hearing at the district or state level, or through a private lawsuit in federal or state court. OCR accepts and investigates complaints of violations of Section 504 by schools which receive federal funding. OCR will only investigate complaints which are filed within 180 days of the discriminatory actions unless certain conditions permit granting a waiver of this requirement.⁴³

Finally, if a childcare program receives funding from HHS, a parent or guardian can file a complaint against the childcare provider through HHS⁴⁴. Enforcement at HHS will be strengthened once Section 504 regulations are updated, which is ongoing.

ii. State-Level Complaints

State agencies generally have their own process for handling complaints, including those related to discrimination in the childcare setting. The agency to which such a complaint may be filed depends on the state.

⁴⁰ Mo. Code Regs. tit. 5 § 25-400.090(1)(A)(1) (2023)

⁴¹ U.S. Department of Justice, Civil Rights Division, *File a Complaint* <https://www.ada.gov/file-a-complaint/>

⁴² U.S. Department of Education, Office for Civil Rights, *Section 504 Protections for Students with Diabetes* <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-diabetes-202402.pdf>

⁴³ U.S. Department of Education, Office for Civil Rights Complaint Assessment System <https://ocrcas.ed.gov/>

⁴⁴ U.S. Department of Health & Human Services, Office for Civil Rights, *Know the Rights that Protection Individuals with Disabilities from Discrimination* <https://www.hhs.gov/sites/default/files/knowyourrights504adafactsheet.pdf>

For example:

- California’s Department of Social Services has a complaint hotline, email address, and online complaint form.⁴⁵
- The California Attorney General Bureau of Children’s Justice also has an online complaint form.⁴⁶
- The Texas Department of Family and Protective Services has a Child Care licensing complaint form available online.⁴⁷
- The Florida Department of Children and Families has an online complaint form to report childcare providers.⁴⁸
- The New York State Office of Children and Family Services maintains a complaint line.⁴⁹
- Pennsylvania maintains five regional child development offices, each with it’s own phone number to contact for complaints.⁵⁰

Because complaint processes and contact information vary by state, it is important to research the complaint method applicable in the relevant jurisdiction, and to seek legal counsel to ensure appropriate procedures are followed.

iii. Private Litigation

Under the ADA and Section 504, litigation also may be filed in the appropriate court, generally whether or not other available complaint processes have been utilized.

Protection & Advocacy systems (P&A) in each state often assist or represent individuals filing litigation. P&As are federally funded and administered in each state and support people with disabilities. They offer a variety of services, including information and referrals, training and education, and legal assistance and advocacy on behalf of people with disabilities.

V. **Guidance for Families, Childcare Program, and Health Care Providers to Help Children with Diabetes Be Able to Fully and Safely Participate in the Childcare Setting**

The list below outlines the responsibilities families, childcare providers, and health care providers have in making sure children with diabetes are safe in the childcare setting. These were

⁴⁵ California Department of Social Services, CCLD Complaint Hotline <https://www.cdss.ca.gov/inforesources/cclld-complaint-hotline>

⁴⁶ California Department of Justice, Complaint to the Bureau of Children’s Justice <https://oag.ca.gov/bcj/complaint>

⁴⁷ Texas Department of Family and Protective Services, Case-Specific Question and Complaint Form https://www.dfps.texas.gov/Contact_Us/Questions_and_Complaints/complaints.asp

⁴⁸ Florida Department of Children and Families, Child Care Provider Complaint <https://www.myflfamilies.com/services/child-family/child-care/child-care-resources-families/file-child-care-provider-complaint>

⁴⁹ New York State, Office of Children and Family Services, Division of Child Care Services, Toll-Free Complaint Line <https://ocfs.ny.gov/programs/childcare/safety-hotline.php>

⁵⁰ Pennsylvania Department of Human Services, Regional Child Development Offices <https://www.dhs.pa.gov/contact/Pages/Regional-Child-Development-Offices.aspx>

developed in the ADA's Childcare Statement.⁵¹ The list also includes ways each party can advocate for a child with diabetes in the childcare setting.

1. The parent/guardian should provide the childcare program with the following:
 - A completed DMMP or other written care plan, signed by a child's diabetes health care provider.
 - Information about diabetes management and training resources, as needed.
 - Current and accurate emergency contact information, including phone numbers for the parent/guardian and the child's diabetes health care provider.
 - Materials, equipment, supplies, insulin/medication, and food needed for diabetes management and ongoing monitoring of supplies for replenishment or replacement if expired.
 - An appropriate container for the disposal of sharps.
 - A method of communication between the parent/guardian and the childcare program, such as a logbook or electronic diabetes management application.
 - Basic diabetes training (as needed) for all childcare staff members who have responsibility for the child and more advanced child-specific training for the designated childcare staff member(s) responsible for assisting with diabetes management tasks.
 - Information about factors that may impact blood glucose levels, such as the child's daily activity level, food intake prior to arrival at the center, and whether the child is experiencing an illness.
 - Consent to release confidential health information so the childcare program can communicate directly with the child's diabetes health care provider, with direction on when such communication is appropriate.
 - If families are facing issues with their childcare provider, they can reach out to the ADA's Center for Information at 1-800-DIABETES or AskADA@diabetes.org for self-advocacy resources.

2. The childcare program should:
 - Understand federal and state laws and regulations as they apply to children with diabetes.
 - Allow enrollment of children living with diabetes as required by law.
 - Provide support to all families of children in its care, including those with limited access to resources or those with language barriers, and share community resources for families of children with diabetes, including resources for food and other supportive services.
 - Assess how the childcare program will provide routine and emergency care after consulting with parent/guardian and reviewing the DMMP.
 - Recruit, designate, and train staff who will be responsible for the provision of diabetes care to the child.
 - Work with parents/guardians to arrange for training of all staff members who have responsibility for the child and more advanced child-specific training for

⁵¹ American Diabetes Association, *Standards of Care in Diabetes 2024; Care of Young Children with Diabetes in the Childcare and Community Setting*

designated childcare staff member(s) responsible for assisting with diabetes management tasks.

- Provide secure and prompt access to diabetes materials, equipment, supplies, insulin/medication, and food to trained staff members, regularly check supplies and medication, and inform parents/guardians of missing or expired items.
- Be mindful of the child's dietary needs. Provide meal and snacks as per the child's dietary plan.
- Maintain accurate documentation of all diabetes care provided to a child in its care.
- Collaborate with parents/guardians and/or the child's health care providers to obtain current information about diabetes management and the child's current needs.
- Regularly communicate with the parent/guardian about blood glucose results, insulin administration, treatment of hypo- and hyperglycemia, food intake, and physical activity using a logbook, electronic application, or other agreed-upon method.
- Monitor glucose and ketone levels as described in DMMP or when there are symptoms of hypo- or hyperglycemia. Communicate with families and health care providers as needed.
- Keep sharps container in secure location and ensure staff is trained in proper handling and disposing of sharps.
- Ensure children with diabetes have equal opportunity and participation in program activities, except as necessary to meet their diabetes management needs.
- Respect the child's and family's confidentiality and right to privacy.

3. The child's diabetes health care team should:

- Provide a completed and signed DMMP or other written care plan containing medical orders with updates as needed.
- In conjunction with the parent/guardian, provide basic and comprehensive training to childcare staff.
- Provide guidance for frequency of glucose and ketone monitoring, normal ranges, and treatment for high and low readings.
- Describe dosing for meals and snacks. Describe amount of carbohydrates to use to treat hypoglycemia and frequency of treatment.
- Be available to respond to questions about the child's diabetes management needs in the childcare setting, with parental consent.
- Provide ongoing diabetes expertise and guidance as needed.
- Advocate, as needed, to ensure a child's needs are met while in the childcare setting.

If families or local diabetes support organizations are still having difficulty ensuring children are able to access childcare providers and stay safe, the following steps can be taken to advocate:

1. **Ask:** Reach out to the ADA's 1-800-DIABETES or AskADA@diabetes.org for self-advocacy resources.

2. **Educate:** Many times, the problem with childcare providers is that they are unfamiliar with diabetes or the rights children with diabetes have in those settings. Educating the provider can often resolve the problem.
3. **Negotiate:** If the childcare provider still pushes back, it may be time to negotiate. Negotiation should all take place in writing. The child’s health care provider can be a tool in this to explain what should be done using their expert opinion. It’s also an opportunity to bring in an advocate to support.
4. **Litigate:** When negotiation doesn’t succeed, it may be time to litigate. This can be done through submitting a complaint to the relevant federal agency, as described above, or through the court system.
5. **Legislate:** Sometimes, litigation does not solve the issues with the ways laws are written. In that case, it might make sense to legislate to change the law to better protect children with diabetes at the state or federal level.

VI. Recommendations to Clarify and Strengthen the Rights of Children with Diabetes to Fully and Safely Participate in the Childcare Setting

a. Clarification in Federal Regulatory Guidance

The federal government should clarify childcare regulations to explain the responsibilities childcare centers have to care for children with disabilities, including diabetes.

The HHS is currently undergoing this process within their Section 504 regulations.⁵² The ADA submitted comments on draft regulations in November 2023, including as to HHS-funded childcare programs and their duties to include and provide reasonable accommodations to children with diabetes and other disabilities.⁵³

To the extent the HHS’s Section 504 regulations remain general or broad, we recommend that HHS develop specific guidance documents with hypothetical examples and explanations, to ensure childcare providers understand what the law requires of them in the context of serving children with diabetes and diabetes-related accommodation needs. Such guidance may be similar to technical assistance materials that the DOJ has issued on disability-related matters.

b. Provide Diabetes-Specific Guidance in State Regulations on Childcare Provider Responsibilities

In addition to federal clarity, states should consider clarifying and updating their childcare medication administration and related regulations to ensure childcare programs have appropriate guidance as to legal requirements and modern diabetes management methods.

⁵² U.S. Department of Health and Human Services Proposed Rule: Discrimination on the Basis of Disability in Health and Human Service Programs or Activities (Sept. 14, 2023)
<https://www.federalregister.gov/documents/2023/09/14/2023-19149/discrimination-on-the-basis-of-disability-in-health-and-human-service-programs-or-activities>

⁵³ American Diabetes Association Comment on HHS Proposed Rule (Nov. 10, 2023)
<https://www.regulations.gov/comment/HHS-OCR-2023-0013-0825>

Several states do not include rules which mandate a childcare program to have medication administration protocols in order to become licensed. Other states require such protocols but do not explicitly list out diabetes care tasks in the regulations or guidance.

Some states, however, have developed a model for other states to emulate. Delaware is a leader in this regard. Its childcare regulations dedicate an entire section to diabetes care and management. The Delaware Code gives the Office of Child Care Licensing, within the Department of Education, the power to create and implement rules and regulations for childcare licensing.⁵⁴ This office created the “DELACARE Regulations for Family and Large Family Child Care Homes” which contain a thorough section on diabetes maintenance, care, and monitoring. The regulations also specifically provide that non-clinical staff can give insulin and glucagon after being properly trained. Delaware’s childcare licensing regulations are among the most thorough compared to other states, including on the topic of diabetes management.

Iowa is another state that mentions diabetes explicitly in its rules though with less detail. Iowa’s code states that if a child needs special medical services, the childcare program must have a plan explaining the procedure. Many states have similar wording in their statutes, but Iowa goes a step further and includes an example list of different medical conditions that may require special medical services, including diabetes.⁵⁵

In addition to Delaware—Iowa, Arkansas, Colorado, Kentucky, and Wyoming all mention diabetes management in their regulations and require medication administration in order for a childcare provider to be licensed. See Appendix B for Delaware’s regulations and self-training on diabetes management.

c. Government Agencies Should Pursue Enforcement Actions Against Childcare Providers Who Exclude or Discriminate Against Children with Diabetes

Federal and state civil law enforcement should care about enforcing the law when it comes to childcare because it is core to family well-being and financial self-sufficiency, equal opportunity, and anti-poverty efforts. By reducing discrimination in the childcare setting, government agencies can ensure children have equal opportunity to learn and grow.

The U.S. DOJ has had a positive impact through its Title III enforcement actions against childcare providers who discriminate against children with diabetes, as demonstrated in Section IV. The U.S. Department of Education and U.S. Attorney’s Offices have had several enforcement actions as well. However, they are limited to the K-12 setting.

Even with U.S. DOJ’s positive impact, there is more that can be done. Government agencies, such as HHS, should mandate and provide training to receive childcare licenses on caring for children with disabilities, including chronic illnesses such as diabetes. This would shift the burden of finding appropriate training on an ad hoc basis off the childcare centers, give the

⁵⁴ 14 Delaware Code, §3003A (2022).

⁵⁵ 441 IAC 109.10(3) (2023); 441 IAC 109.9(2) (2023)

centers notice of the laws and regulations they must follow, and create a safe environment for children with disabilities as soon as the childcare center is licensed.

The U.S. DOJ should also offer training to state agencies to learn how to better enforce the laws and negotiate settlement agreements with childcare centers who may not be compliant. Some U.S. Attorney's Offices have had a positive impact on the rights of kids with diabetes as well in the school setting through voluntary resolution letters between the U.S. Attorney in that state and school districts. For example, in New York, the South District U.S. Attorney investigated and resolved a conflict with the New York State Board of Education regarding following physician's orders that allowed parental involvement in insulin dosing/scheduling.⁵⁶ These offices should look at childcare programs just as they have with schools. Their enforcement focus could be on large providers while simultaneously offering guidance to childcare providers of all sizes so they have the knowledge and accountability to do the right thing.

State agencies should establish model based upon the U.S. DOJ settlement agreements, which includes clear language protecting the rights of children with diabetes in childcare settings. For example, the Bureau for Children's Justice (BCJ) in California has ample opportunity to work in this area, as its investigative work addresses systemic issues that impact children in youth in the state of California, focusing on remedying discriminatory policies or procedures. BCJ already has disability discrimination work in the school setting and could expand to the childcare setting.

⁵⁶ U.S. DOJ, United States Attorney for the Southern District of New York, Resolution of Investigation of ADA Complaints Regarding Adjustment of Medication for Students With Diabetes (May 2017) <https://www.justice.gov/usao-sdny/press-release/file/970231/dl>

APPENDIX A: 50 STATE SURVEY

This information was prepared by the Legal Advocacy division of the American Diabetes Association® (ADA), a national leader in diabetes information and advocacy. This information covers state rules for childcare providers and may not include all the relevant rules and important details. While the ADA strives to provide current information, laws and resources can frequently change. This information is not legal advice and professional legal advice should be sought as needed.

Childcare laws and regulations in each state specify if and how the administration of medication can take place in childcare settings. Below is a summary of the relevant regulations for the administration of insulin and administration of glucagon in the childcare setting per state. Regardless of state law, federal laws may also allow unlicensed staff to provide this care. This may be necessary so that children with diabetes can access childcare facilities just like any other child. In case of a conflict between federal and state laws, federal laws protect the rights of children. The law in this area is very complicated so we encourage you to contact us for further information.

*** Updated September 2024

State	Can non-medical professionals administer glucagon (i.e. childcare staff)?	Can non-medical professionals administer insulin (i.e. childcare staff)?
Alabama	Yes. Glucagon administration must be ordered and authorized by child's health professional. Ala. Admin. Code r. 660-5-26-.04(6)(a)(2)(i-vi) (2024)	Yes. Insulin administration must be ordered and authorized by child's health professional. Ala. Admin. Code r. 660-5-26-.04(6)(a)(6)(i-vi) (2024)
Alaska	Yes. Must have written permission from the parent and follow written health professional's orders. Child Care Licensing Policies and Procedures Manual § 6080.3A(2) (2020)	Yes. Must have written permission from the parent and follow written health professional's orders. Child Care Licensing Policies and Procedures Manual §6080.3A(2) (2020)
Arizona	Yes. In an emergency, an individual may give an injection (glucagon) to an enrolled child. Ariz. Admin. Code § 9-3-309(B-C) (2024)	Yes. A designated staff member can administer insulin if they receive written authorization on a completed Department authorization form and have written physician authorization. Ariz. Admin. Code § 9-3-309(B-C) (2024)
Arkansas	Yes. Must have signed parental permission. Enrolled children with diabetes must have a care plan that is updated yearly. 016-22-20 Ark. Code R. § 5(1101)(7,15) (2024)	Yes. Must have signed parental permission. Enrolled children with diabetes must have a care plan that is updated yearly. 016-22-20 Ark. Code R. § 5(1101)(7,15) (2024)
California	Yes. Must have signed approval and instructions from child's parent/guardian. Childcare provider must have written plan for medication administration.	Yes. Must have signed approval and instructions from child's parent/guardian. Childcare provider must have written plan for medication administration.

	Cal. Code Regs. Tit. 22, § 101226(e)(3) (2024)	Cal. Code Regs. Tit. 22, § 101226(e)(3) (2024)
Colorado	Yes. A nurse or other authorized health professional may delegate glucagon administration to someone within a childcare facility. The child must have an individualized health plan.	Yes. A nurse or other authorized health professional may delegate insulin administration to someone within a childcare facility. The child must have an individualized health plan.
	Colo. Code. Regs. Chap. 3 §716-1 Sub-Chap. 13 § 8 (2024)	Colo. Code. Regs. Chap. 3 §716-1 Sub-Chap. 13 § 8 (2024)
Connecticut	Yes. Must have staff trained in glucagon administration at all times child is present.	Yes. Must have written order from physician or other licensed health provider.
	Conn. Gen. Stat. § 19a-79(a) (2024)	Conn. Gen. Stat. § 19a-79(a) (2024)
Delaware	Yes. Written parental permission needed. There must be a trained staff member with an administration of medication certificate at all times.	Yes. Written parental permission needed. There must be a trained staff member with an administration of medication certificate at all times.
	14 Delaware Code, §3003A (2022); Del. Dept. of Educ., <i>Delacare: Regulations for Family and Large Family Child Care Homes</i> (2022)	14 Delaware Code, §3003A (2022); Del. Dept. of Educ., <i>Delacare: Regulations for Family and Large Family Child Care Homes</i> (2022)
Florida	Yes. Childcare personnel caring for a child with a chronic condition must be trained to recognize and respond to medical emergencies.	Yes, but not required. If the facility does give medication must have written parental authorization.
	Fla. Admin. Code R. 65C-22.001(6) (2024) (cites to handbook (2020))	Fla. Admin. Code R. 65C-22.001(6) (2024) (cites to handbook (2020))
Georgia	Yes. Must have written parental or physician permission.	Yes. Must be administered by authorized staff member and must have written parental or physician permission.
	Ga. Comp. R. & Regs. R. 591-1-1-.20 (2024)	Ga. Comp. R. & Regs. R. 591-1-1-.20(6) (2024)
Hawaii	Yes. Facilities must provide for the special needs of admitted children. Must have written permission from parent for medication.	Yes. Facilities must provide for the special needs of admitted children. Must have written permission from parent for medication.
	HI Admin Rules 17-891.2-45 (2023)	HI Admin Rules 17-891.2-45 (2023)
Idaho	Yes. May only be administered by staff member authorized by parent	Yes. May only be administered by staff member authorized by parent.
	Child Care Provider Manual: A Guide for Child Care Professional's in Idaho (2024)	Child Care Provider Manual: A Guide for Child Care Professional's in Idaho (2024)
Illinois	Yes. Must administer medications according to specific parental written instructions	Yes. Must administer medications according to specific parental written instructions
	Ill. Admin. Code tit. 89, § 406.14	Ill. Admin. Code tit. 89, § 406.14
Indiana	Yes. Must have written permission from parents and instructions.	Yes. Must have written permission from parents and instructions.
	470 IAC 3-1.1-44(f) (2024)	470 IAC 3-1.1-44(f) (2024)
Iowa	Yes. Staff member must have completed training that includes medication administration.	Yes. Staff member must have completed training that includes medication administration.
	441 IAC 109.10(3) (2024)	441 IAC 109.10(3) (2024)

Kansas	Yes. Must have completed medication administration training and have written permission from parent. Must have procedures to meet the needs of child with chronic medical condition (i.e. giving glucagon/emergency care)	Yes. Must have completed medication administration training and have written permission from parent. Must have procedures to meet the needs of child with chronic medical condition (i.e. giving insulin)
	KS Dept. of Health and Env. Licensing Preschools and Childcare Centers (2024)	KS Dept. of Health and Env. Licensing Preschools and Childcare Centers (2024)
Kentucky	Yes. Must have written request from parent or health professional.	Yes. Must have written request from parent or health professional.
	922 KAR 2:120 § 7(4-6) (2024)	922 KAR 2:120 § 7(4-6) (2024)
Louisiana	Yes. Must have written permission from parent and signed plan of action for emergency medication administration.	Yes. Must have written permission from parent.
	La. Admin. Code tit. 28 pt. CLXI § 1917(K) (2024)	La. Admin. Code tit. 28 pt. CLXI § 1917(A) (2024)
Maine	Yes. Must have written, signed, and dated permission from parent.	Yes. Must have written, signed, and dated permission from parent.
	10-148-32 Me. Code R. § 12(K) (2024)	10-148-32 Me. Code R. § 12(H) (2024)
Maryland	Yes. Must have signed parental permission and approval by licensed health practitioner. Employee must have completed medication administration training.	Yes. Must have signed parental permission and approval by licensed health practitioner. Employee must have completed medication administration training.
	Md. Code Regs. 13A.16.11.04 (2024)	Md. Code Regs. 13A.16.11.04 (2024)
Massachusetts	Yes. Employee must be trained to administer medication. Must have written parental consent and health care practitioner authorization.	Yes. Employee must be trained to administer medication. Must have written parental consent and health care practitioner authorization.
	606 Mass. Code Reg. § 7.11(1-2) (2024)	606 Mass. Code Reg. § 7.11(1-2) (2024)
Michigan	Yes. Must have written parental permission	Yes. Must have written parental permission.
	Mich. Admin. Code R. 400.8152	Mich. Admin. Code R. 400.8152
Minnesota	Yes. Must have written parental permission and written health practitioner instructions. Must have emergency plan for accommodating child with diabetes.	Yes. Facilities are not required to administer medication. If chooses to administer, must have written parental permission and written health practitioner instructions.
	Minn. Stat. § 245H.15(1)(b)(4) (2023)	Minn. Admin. Rules § 9503.01340
Mississippi	Yes. Facilities must have health and emergency procedures which include giving a child medication like glucagon. Must have signed parental authorization.	Yes. Facilities are not required to administer medicine, but capable staff may choose to. Must have signed parental authorization.
	15 Miss. Code R. § 11-55-1.4.1(4)(c) (2024)	15 Miss. Code R. § 11-55-1.4.1(4)(c) (2024) & 15 Miss. Code R. § 11-55-1.5.1(2)(b) (2024)
Missouri	Yes. Must have written parental permission. Childcare provider must follow parent's written instructions for medical emergencies (give glucagon)	Yes. Not required to administer medicine but may choose to do so. Must have written parental permission.
	Mo. Code Regs. tit. 5 § 25-400.185(5)(A)(2023)	Mo. Code Regs. tit. 5 § 25-400.090(1)(A)(1) (2023)

Montana	Yes. May administer without parental authorization if an emergency	Yes. Must have written parental authorization
	Mont. Code Ann. § 52-2-736(2) (2023)	Mont. Code Ann. § 52-2-736(1) (2023)
Nebraska	Yes. Must have written parental permission and instructions and a written authorization statement from the prescribing health professional	Yes. Must have written parental permission and instructions and a written authorization statement from the prescribing health professional
	91 Neb. Admin. Code, ch. 3, § 006.27 (2024)	391 Neb. Admin. Code, ch. 3, § 006.27 (2024)
Nevada	Yes. In an emergency any capable staff can administer. Must have parental authorization.	Yes. Must have parental authorization. Must have designated person to be trained and administer medication.
	Nev. Admin. Code § 432A.376 (2023) & Nev. Admin. Code § 432A.585 (2023)	Nev. Admin. Code § 432A.376 (2023) & Nev. Admin. Code § 432A.585 (2023)
New Hampshire	Yes. Authorized staff may administer medication if there is a medical order from a licensed practitioner and written permission from a parent.	Yes. Authorized staff may administer medication if there is a medical order from a licensed practitioner and written permission from a parent. Insulin must be readily accessible to childcare staff
	N.H. Code Admin. R. He-C 4002.21(a) (2024)	N.H. Code Admin. R. He-C 4002.21(p) (2024)
New Jersey	Yes. There must be two trained staff members present to provide diabetes care. Must have written approval from parent(s).	Yes. There must be two trained staff members present to provide diabetes care. Must have written approval from parent(s).
	N.J. Admin. Code § 3A:52-7.5(a)(8) (2024)	N.J. Admin. Code § 3A:52-7.5(a)(8) (2024)
New Mexico	Yes. Must have a designated staff member to administer medication.	Yes. Must have a designated staff member to administer medication.
	N.M. Code R. §§ 8.9.4.22(E)(2) (2024)	N.M. Code R. §§ 8.9.4.22(E)(2) (2024)
New York	Yes. Childcare provider may choose to administer medication. May administer insulin injections if the parent, childcare provider and the child's health care provider have agreed on a treatment plan. Childcare provider must confer and get authorization from healthcare consultant and complete required training.	Yes. Childcare provider may choose to administer medication. May administer insulin injections if the parent, childcare provider and the child's health care provider have agreed on a treatment plan. Childcare provider must confer and get authorization from healthcare consultant and complete required training.
	N.Y. Comp. Codes R. & Regs. tit. 18 § 415.13(c)(1) (2024)	N.Y. Comp. Codes R. & Regs. tit. 18 § 415.13(c)(1) (2024)
North Carolina	Yes. Children with diabetes must have a medical action plan with diabetes care instructions, including glucagon administration by staff.	Yes. Children with diabetes must have a medical action plan with diabetes care instructions, including insulin administration by staff.
	10A N.C. Admin. Code 9.0801(b) & 9.0803 (2024)	10A N.C. Admin. Code 9.0801(b) & 9.0803 (2024)
North Dakota	Yes. Must have written permission from parent. Must have written diabetes care plan.	Yes. Must have written permission from parent. Must have written diabetes care plan
	N.D. Admin. Code 75-03-09-25(1) (2024)	N.D. Admin. Code 75-03-09-25(1) (2024)

Ohio	Yes. Must have signed parental permission. If medication is not in the original container, must have the prescriber sign authorization.	Yes. Must have signed parental permission. If medication is not in the original container, must have the prescriber sign authorization.
	Ohio Admin. Code 5101:2-12-16(A)(1) (2024)	Ohio Admin. Code 5101:2-12-25(B) and (E) (2024)
Oklahoma	Yes. Must have parental permission. Emergency medications like glucagon must be easily accessible.	Yes. Must have parental permission.
	Okla. Admin. Code § 340:110-3-295 (2024)	Okla. Admin. Code § 340:110-3-295 (2024)
Oregon	Yes. Must have signed parental authorization	Yes. Must have signed parental authorization.
	Or. Admin. R. 414-300-0230(1) (2024)	Or. Admin. R. 414-300-0230(1) (2024)
Pennsylvania	Yes. Must make reasonable accommodations which includes glucagon administration. Must have written parental consent.	Yes. Must make reasonable accommodations which includes insulin administration. Must have written parental consent.
	55 Pa. Code § 3270.133 (2023)	55 Pa. Code § 3270.133 (2023)
Rhode Island	Yes. Must have written permission from parent and written order from prescribing health practitioner	Yes. Must have written permission from parent and written order from prescribing health practitioner
	DCYF Child Care Program Regulations for Licensure 214-RICR-40-00-01.8(C)	DCYF Child Care Program Regulations for Licensure 214-RICR-40-00-01.8(C)
South Carolina	Yes. Do not need parental permission if there is a medical emergency	Yes. Must have signed parental consent.
	S.C. Code Ann. § 63-13-185(D) (2023)	S.C. Code Ann. § 63-13-185(B) (2023)
South Dakota	Yes. Must have parental permission.	Yes. Must have parental permission.
	S.D. Admin. Rule 67:42:17:25 (2024)	S.D. Admin. Rule 67:42:17:25 (2024)
Tennessee	Yes. Must have written parental consent.	Yes. Staff person must be trained in medication administration. Must have written parental consent.
	Tenn. Comp. R. & Regs. 1240-04-01-.08(2)(d)(1)(viii) (2024)	Tenn. Comp. R. & Regs. 1240-04-01-.12(12)(b) (2024)
Texas	Yes. Parental consent is not required in emergencies.	Yes. Signed parental authorization required.
	26 Tex. Admin. Code §746.3803 (2024)	26 Tex. Admin. Code §746.3803 (2024)
Utah	Yes. Must have written medication form from parent(s)	Yes. Must have written medication form from parent(s)
	Utah Admin. Code r. 381-100-17 (2024)	Utah Admin. Code r. 381-100-17 (2024)
Vermont	Yes. Staff administering medication must complete training course. Must have written permission from parents.	Yes. Staff administering medication must complete training course. Must have written permission from parents.
	FCCH 5.6 (2022)	FCCH 5.6 (2022)
Virginia	Yes. There must always be a staff member trained in glucagon administration when child with diabetes is present.	Yes, if chooses to. Staff member administering medicine must be trained.
	8 Va. Admin. Code § 20-780-245(J)(3) (2023)	8 Va. Admin. Code § 20-780-245(J)(1) (2023)

Washington	<p>Yes. Must have individual care plan signed by parent with instructions for emergency medication.</p> <p>Wash. Admin. Code § 110-300-0300(2)(a)(iii) (2023)</p>	<p>Yes. Must have individual care plan signed by parent with instructions for diabetes management.</p> <p>Wash. Admin. Code § 110-300-0215(3) (2023)</p>
Washington, D.C.	<p>Yes. Staff administering must have completed a medication training program. Must have parental permission and health practitioner approval.</p> <p>D.C. Mun. Regs. tit. 5 § A153.1 (2024)</p>	<p>Yes. Staff administering must have completed a medication training program. Must have parental permission and health practitioner approval.</p> <p>D.C. Mun. Regs. tit. 5 § A153.1 (2024)</p>
West Virginia	<p>Yes. Must have written parental permission and health provider order. Must be administered by trained staff.</p> <p>W. Va. Code R. § 78-1-15.2.a.5 (2024)</p>	<p>Yes. Must have written parental permission and health provider order. Must be administered by trained staff.</p> <p>W. Va. Code R. § 78-1-15.4.h (2024)</p>
Wisconsin	<p>Yes. Must have written parental authorization.</p> <p>Wis. Admin. Code DCF § 251.07(6)(f)(1)(a) (2023)</p>	<p>Yes. Must have written parental authorization.</p> <p>Wis. Admin. Code DCF § 251.07(6)(f)(1)(a) (2023)</p>
Wyoming	<p>Yes. Children with diabetes must have a care plan with directions and symptoms for glucagon administration. Must be administered by trained staff. Must have parental consent.</p> <p>Wyo. Dept. of Family Services Childcare Licensing Rules Chap. 1 § 1 & Chap. 4 § 5(xix) (2022)</p>	<p>Yes. Children with diabetes must have a care plan with directions and symptoms for insulin administration. Must be administered by trained staff. Must have parental consent.</p> <p>Wyo. Dept. of Family Services Childcare Licensing Rules Chap. 1 § 1 & Chap. 4 § 5(xix) (2022)</p>

APPENDIX B: Delaware Diabetes Management Regulation

Diabetes Maintenance and Administering Glucagon®

It is important for children who receive insulin for treatment of diabetes to have a written Emergency Diabetes Action Plan of Care completed and signed by the parent or guardian and the health care provider. This plan is in addition to the MAR and outlines how glucose is monitored, when medication should be given, and includes additional information related to the specific care required for the child. When a child with diabetes will be taken off site for a field trip, for example, child care staff must bring necessary supplies, medications, and snacks as described in the child's Diabetes Action Plan of Care.

1. Glucose Monitoring

Child care staff are permitted to provide glucose monitoring to children with diabetes by piercing the skin with a lancet (typically on the finger) to draw blood, then applying the blood to a chemically active disposable "test-strip." Lancets must be disposed of according to biohazard regulations or collected in a hard-plastic container and returned to the parent or guardian for disposal. Before lancets are used to monitor glucose at the child care facility, the child care staff must be trained by a qualified instructor which can include parents or guardians.

Continuous Glucose Monitors (CGMS) provide real-time glucose data on a visual display in five minute intervals for earlier identification of low glucose. CGMS alarms alert the user when glucose levels are above or below a pre-programed target range. Child care staff should be prepared to respond and provide assistance. Before the CGMS is used at the child care facility, the child care staff must be trained to use the CGMS by a qualified instructor which can include parents or guardians. If the monitor is not properly attached to the child's skin, immediately call the parent or guardian.

2. Insulin Pump

An insulin pump is a device that allows the user to enter required information to make sure the child is receiving the proper amount of insulin. Before the insulin pump is used at the child care facility, the child care staff must be trained to use the insulin pump by a qualified instructor which can include parents or guardians. If the pump's catheter comes out of the child's skin, immediately call the parent or guardian. Child care staff may not insert catheters.

3. Insulin Injections

Child care staff may administer insulin injections to children with diabetes if the provider has a valid Administration of Medication certificate and the additional training specified by the child's health care provider that explains how to properly administer insulin injections. Child care staff must keep this documentation with the MAR. Information

regarding insulin dosages will be provided by the child's health care provider and must be appropriate to the child's Diabetes Action Plan of Care.

4. Glucagon®

Glucagon® is an emergency medication used to treat severe low blood sugar (hypoglycemia) by increasing blood glucose levels. Due to its emergency nature, it may be given by injection by a child care staff. The parent or guardian must provide written instructions and training to the child care staff stating the conditions under which the medication should be given, how to give the medication, and any follow-up requirements. If you administer Glucagon, you must notify the child's parent or guardian immediately that the medication was given.

Hypoglycemia may result from:

- Too much insulin;
- Insulin was administered without eating;
- Too little food consumed;
- A delay in receiving a snack/meal;
- Increased physical activity; or
- Illness.

How to Administer Glucagon® for Hypoglycemia

- If you are alone, follow these steps and then immediately call 9-1-1 and the child's parent or guardian. If someone else is present, have him or her contact 9-1-1 and the child's parent or guardian;
- Put on gloves;
- Open kit;
- Remove flip top seal from vial;
- Remove needle protector from syringe;
- Slowly inject all sterile water from syringe into vial of Glucagon® (leave needle in vial if possible);
- Gently shake or roll the vial to mix until solution is clear. (May leave syringe in vial);
- Withdraw amount of Glucagon® prescribed from vial back into syringe;
- Inject straight (90° angle) into
 - arm (upper)
 - leg (thigh)
 - or buttocks (as directed in the physician's instructions; may inject through clothing if necessary);
- Slowly inject Glucagon® into site;
- Withdraw needle, apply light pressure at injection site;
- Turn child onto side, child may vomit;
- Place used needle back in kit and close lid (do not recap);
- Give used kit to EMS personnel; and
- Document administration of Glucagon® on MAR.