



## MEDICALLY NECESSARY TREATMENT FAQ

This FAQ is intended to provide an overview of [HB22-1260](#), Access to Medically Necessary Services for Students (effective 8/10/22) and the resulting changes to required school district policy under Colorado law at C.R.S. § 22-20-121. *This FAQ is for informational purposes only and does not constitute legal advice. Specific questions should be referred to the school district's legal counsel.*

### **Background**

HB22-1260 was introduced during the 2022 legislative session. This bill was developed with the aim of assisting children with an autism spectrum disorder (ASD) who may need treatment on campus. ASD is often treated with applied behavioral analysis (ABA), which is a type of interpersonal therapy in which a child works with a practitioner one-on-one, which may require treatment or observation in school settings to adequately promote the student's progress. ABA is specifically referenced in the bill's legislative declaration as one "critical example" of a service that may need to be delivered in a school setting.

The bill as originally introduced would have required that schools provide "reasonable accommodations" to children in order to permit them to receive necessary medical treatment at school. After several rounds of amendments, the current version was passed and signed by the Governor on June 2, 2022. It requires, among other new requirements, administrative units to adopt a policy concerning how a student with a prescription for medically necessary treatment could receive such treatment at school, as required by applicable federal and state laws. The changes as a result of HB22-1260 are discussed in more detail below.

### **Q: Are boards required to adopt a policy on this subject?**

A: Yes. Due to the passage of HB22-1260, Access to Medically Necessary Services for Students, districts and BOCES are required to adopt a policy on this subject. 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 Title II of the Americans with Disabilities Act.

### **Q: Are boards required to adopt a regulation on this subject?**

A: No, a regulation is not required by law. However, adopting a regulation could support districts in their implementation of the policy.

**Q: When must this policy be adopted?**

A: This policy must be adopted by **July 1, 2023**. CASB has drafted a sample model policy, JLCDC\*, and sample model regulation, JLCDC\*-R, which districts may choose to review as they develop their own policy and any regulation.

**Q: What are Section 504 and the ADA?**

A: Section 504 refers to Section 504 of the federal “Rehabilitation Act of 1973,” 29 U.S.C. sec. 794, as amended, and the ADA refers to Title II of the federal “Americans with Disabilities Act of 1990.” These pieces of legislation form a framework that requires administrative units to provide public school students with disabilities with a free appropriate public education (FAPE) in the least restrictive environment (LRE) possible. To comply with these laws, schools must offer each qualified student an Individualized Education Program (IEP) reasonably calculated to enable the child to make progress in light of their circumstances. If a child does not qualify for an IEP, they may still be entitled to a “504 plan,” listing accommodations needed to ensure that their education is on par with the education provided to students without disabilities.

**Q: What is considered medically necessary treatment?**

A: Medically necessary treatment is defined broadly within the bill, simply as “treatment recommended or ordered by a Colorado licensed health-care provider acting within the scope of the health-care provider’s license.” However, because schools are only legally required to allow medically necessary treatment on campus if required by Section 504 and the ADA, medically necessary treatment for the purposes of this policy is limited to treatment that is required for a student with disabilities to meaningfully access a FAPE.

**Q: Who is a private health-care specialist?**

A: According to the law, a health-care specialist is a health-care provider who is licensed, certified, or authorized to provide health-care services in Colorado. This is a broad definition that would cover most health professionals in Colorado, as long as they have complied with requirements for their licenses. The law specifically includes pediatric behavioral health treatment providers in the state medical assistance program, and autism services providers who provide treatment via Medicaid.

**Q: Can schools use their own providers to offer medically necessary treatment to students?**

A: It is CASB’s position that the bill does not prohibit a school from using either their own staff (if properly credentialed) or a qualified outside provider selected by the school. In practice, this could result by a school denying permission for a private health-care specialist to treat a student on school premises, but still providing the student access to medically necessary treatment by using qualified staff or a contract provider chosen by the district.

**Q: Can a staff member order or recommend medically necessary treatment for a student?**

A: The statute does not necessarily prohibit a staff member who meets the definition of a “private health-care specialist” from recommending or ordering medically necessary treatment to a student in their district. However, it is CASB’s position that this is not advisable, considering the intent of the law and potential conflicts of interest. As such, CASB’s sample policy prohibits school district employees from being recognized as private health-care specialists for the purposes of the policy.

**Q: Are all doctors or treatment providers who enter campus required to follow this policy?**

A: Not necessarily. This policy is intended to be used for students who have or may be eligible to have a 504/IEP team. CASB is aware that some districts have relationships with organizations that provide medical or health services in schools, such as community clinics offered in school facilities. These services may or may not be “medically necessary,” as defined by the policy, but they are unrelated to the IEP or 504 process. As such, if your district offers this or similar services, it would not be practical or appropriate to use this policy to authorize that service. Districts should consider whether to address this service in their policies, after consulting with the district’s legal counsel.

**Q: Are schools required to allow this treatment on school campuses?**

A: Not necessarily. This law does not require boards to permit health-care providers to enter campus and/or to grant a request for medically necessary treatment on campus. However, boards are required to adopt a policy regarding the process by which students could request such treatment.

**Q: What else, other than treating a student, might a private health-care specialist be authorized to do on campus?**

A: In addition to providing medically necessary treatment, the specialist may be able to, according to the decision of the IEP/504 team, collaborate with instructional personnel and observe the student.

**Q: Can a student who does not have an IEP or a 504 plan request medically necessary services?**

A: Yes, a student without an IEP/504 team could request medically necessary services with a school. However, because the services would be necessary only if required for IDEA or 504 compliance, if a student does apply for such treatment, the school would first need to make an eligibility determination under IDEA and 504. If a student is determined eligible, then the IEP team or 504 team would make the determination whether the proposed medically necessary treatment is required at school. If the student is not found to be eligible under either IDEA or 504, the statute would not require the district to permit the requested treatment at school.

**Q: If a student disagrees with the final decision, what happens?**

A: The student can choose to appeal the decision or accept the decision. The statute provides the right for a student to appeal. However, it does not require any specific appeals process. CASB's assumption is that the only possible appeal is related to whether a particular treatment is provided at school. As such, CASB modeled the procedures of the appeal on the process that is used to challenge the content of educational records under FERPA, which is a simple appeals process.

**Q: Can our district deviate from CASB's sample appeal provisions?**

A: Yes, because the statute did not define a specific procedure for the right to appeal, you may choose to devise an alternate appeals process, as long as it does not violate existing law or your district's policies.

**Q: What types of forms and waiver should be used during this process?**

A: Multiple forms and waivers are advisable to minimize district liability in this process, which are described in CASB Model Policy JLCDC\*-R. Generally, schools should take care that any private health-care specialists permitted on school property comply with federal and state laws protecting students' identities and health information. Furthermore, as a non-employee could potentially be entering campus as a regular basis, liability will be a concern for districts. Districts should require parents and health-care specialists to sign forms stating they will not sue the district for injuries or other claims.

**Q: Do districts have to pay for medically-necessary treatment?**

A: No. This cost is solely borne by the student's family and the districts should take care to ensure that parents and providers understand this point.

**Q: How should this policy be made available to students and families?**

A: This policy must be publicly available on the district's website. It must also be available to the student's parent or legal guardian upon request.

**Q: Do I need to include the Notification of Rights section of the sample policy?**

A: Yes, the bill requires that a policy adopted regarding this topic must include a notification of to the parent or legal guardian of the student that the student is provided rights and protections 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.

**Q: Do schools have to report any information to CDE regarding this policy?**

A: Yes. Beginning July 1, 2024 and each July 1 afterward, each district must compile and provide the following information to CDE: (1) the total number of requests for access to a student by a private health-care specialist, and (2) whether the access was authorized or denied. CASB

recommends that the district's policy require schools to designate a particular staff member to report relevant information regarding this policy to the district superintendent on a regular basis.

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