

October 2024



England

Duties for health commissioners when supporting children and young people in education with medical conditions

These slides provide information for Integrated Care Board and NHS Trust Directors of Nursing, for ICB Executive leads for SEND and ICB Designated Clinical and Medical Officers and Commissioners

The slides can be shared with relevant staff within your organisation who are involved in the oversight, delivery and support to partners re these legal duties.



Context

- The NHS England Special Educational Needs and Disabilities (SEND) team are aware of concerns from national partners and local and regional stakeholders about reported inconsistencies across the country in providing support to children and young people with medical conditions in educational settings.
- What we are hearing is that existing national guidance for this policy area is not clear enough in describing the statutory duties of healthcare partners in supporting children and young people where they have a medical condition.
- In response, the national SEND team commissioned legal advice to offer greater clarity on the duties of health bodies, enabling NHS England to share its position on the expectations for local systems.



Purpose of giving clarification

- These slides set out a summary of the key points in the legal advice that NHS England has received about responsibilities for meeting the medical needs of children and young people in educational settings (slides 4 to 7).
- The information is for system leaders (set out in Slide 1) who have responsibility within their organisations for oversight, delivery and partnership working in relation to legal duties and guidance re: meeting the needs of these children.
- As systems and stakeholders have raised concerns that existing Government guidance is not sufficiently clear, they have also asked for support in their understanding of the legal duties in this area.
- We therefore hope that setting out the expectations that NHS England has for health commissioners and providers will support you to work with partners to deliver care for children and young people in school safely.

Overview of NHS England's understanding of legal duties

- Whilst some differences are expected between different local areas due to localised arrangements between partner agencies, it remains essential that Integrated Care Boards health commissioners alongside health providers ensure compliance with their responsibilities under the relevant legislation and national guidance which operates within a complex landscape of relevant policy and legislation.
- Systems should ensure compliance with all relevant legislation and statutory guidance in this area, including but not limited to the most up to date statutory guidance for Supporting Pupils with Medical Conditions at School (December 2015 published by the Department for Education), the Children and Families Act 2014, the SEND code of practice (2015), the Health and Care Act 2022 and NHS Act 2006. These are existing and not new responsibilities for Integrated Care Boards.
- As leaders in local healthcare systems, there is an imperative to work collaboratively with local authority partners and educational providers to ensure that children and young people with medical conditions in education settings can be safely supported to access education.
- All partners have responsibilities to ensure that children and young people are able to exercise their right to access and stay in education. We urge systems to work closely together to ensure that where there is disagreement or conflict about who pays or who provides support, every effort is made to resolve that dispute speedily. This is so there is no negative impact on the child or young person i.e. they are able to safely attend and access school and have their medical needs safely met.

Supporting children and young people with medical conditions in education: commissioning

When supporting children and young people with medical conditions in education settings, any healthcare task involving nursing care which are:

- over and above those tasks which can properly fall under public health responsibilities; and/or
- over and above that which is provided under the school nursing healthy child programme; and/or
- required to be provided in accordance with s.42 of the Children and Families Act 2014

should be commissioned by the relevant Integrated Care Board¹

Due regard should be given to the following principles:

- The needs of each child need to be considered on an individual basis to determine what is reasonable.
- Integrated Care Boards are subject to the public sector equality duty (PSED). They must ensure that their commissioning of services is compliant with the Equality Act 2010 and can be held to account if their commissioning processes are not compliant. Under the Equality Act 2010, a school must also consider what it can do to prevent a substantial disadvantage for a disabled pupil.
- Schools, local authorities, health commissioners and providers must ensure they comply with their statutory duties in relation to co-operation and/or making arrangements to support children with medical conditions²

¹ In some limited circumstances related to specialised commissioning, NHSE may have commissioning responsibility. ICBs must have regard to the High needs funding: 2023 to 2024 operational guide - GOV.UK (www.gov.uk)

² NHS Act 2006, Children and Families Act 2014, Care Act 2014 (for over 18s), Children Act 1989 and 2004 amongst other relevant legislation

Supporting children and young people with medical conditions in education settings: delegation

- With regard to delegating a healthcare task, we strongly recommend Integrated Care Boards and NHS providers adhere to the Nursing and Midwifery Council Code³ and supplementary information on delegation and accountability.
- If it is deemed appropriate to delegate a healthcare task to educational staff, they should be provided with training so that they can perform the task competently and safely. This training should be funded by the Integrated Care Board through existing commissioning arrangements (provided it does not fall into the categories of a public health or school nursing function – set out in Slide 5)
- It must be decided on a case-by-case basis as to:
 - A) who is the best person to carry out the healthcare task for the particular child; and
 - B) whether the healthcare task is appropriate to be delegated (in line with statutory and relevant professional body guidance).

³ <https://www.nmc.org.uk/standards/code/>



Supporting children and young people with medical conditions in education settings: accountability

In regard to supporting children and young people with medical conditions in education settings, accountability for delegating a healthcare task remains with the registered nurse, who is responsible for ensuring:

- that it is safe and appropriate to delegate the specific task, and
- that training is provided, sign off of competency is completed, alongside oversight and monitoring of the delegation, following all relevant guidance.

We expect local area SEND leaders to:

- have effective systems in place to monitor the number and scope of delegated tasks being carried out in schools
- We expect Integrated Care Boards to seek assurance from providers that training is taking place and to ensure that mechanisms for reporting risks and adverse incidents are in place.



Conclusion

The information set out in these slides represent NHS England's understanding of legal duties in this area as at October 2024. We will review this information in the light of any future Government guidance or relevant stakeholder guidance being issued.

We will be holding a webinar on the topic of meeting children's medical needs in educational settings. This will provide an opportunity to talk through in more detail the points set out in this slide deck.

For further information or discussion, please contact your SEND regional lead.