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JOHN H. ASHLEY, EXECUTIVE DIRECTOR

TO: Members, Assembly Committee on Education
FROM: Dan Rossmiller, Government Relations Director
DATE: June 2, 2011
RE: **Assembly Bill 62**, Relating to Administration of Medication to Pupils

The Wisconsin Association of School Boards supports the changes made by the substitute amendment to Assembly Bill 62 offered by Chairman Kestell. The WASB and other had encouraged Rep. Kestell and Sen. Olsen to introduce AB 62 so that lawmakers could take a fresh look at the changes to the law governing the administration of medication to pupils made by 2009 Wisconsin Act 160. Among these changes were:

- new definitions of “drug,” “drug product,” and “nonprescription drug product;”
- new conditions on when a nonprescription drug product may be administered to a pupil, including that the nonprescription drug product must be supplied by the pupil’s parent or guardian in the manufacturer’s package and that the package must list the ingredients and recommended therapeutic dose in a legible format;
- a new condition that none of the school personnel authorized under law to administer medications to a pupil may administer either prescription and nonprescription drugs to a pupil unless that person has received appropriate training that has been approved by the Department of Public Instruction (DPI);
- new provisions that the person administering a drug (either a prescription drug or a nonprescription drug product) to a pupil is not immune from civil liability if he or she has not received DPI-approved training, and that the principal or other school administrator is not immune from liability if he or she authorizes a person who has not received DPI-approved training to administer a drug to a pupil.

2009 Wisconsin Act 160 also required the DPI to promulgate rules to specify the training requirements as well as what components locally-developed training programs would have to include in order to be approved by the DPI.

The WASB became aware of issues surrounding the training requirements last fall when districts complained about that complying with the emergency rules developed by the department was both cumbersome and time-consuming.

Specifically, school districts found themselves in the situation where they believed they need to have at least one person in each school building who was trained in all aspects of administering medication to provide a back-up in case the person primarily responsible for administering medication was unavailable. Without the training, this back-up person and the person assigning the back-up person to administer medications could face liability.

School districts reported to the WASB that, typically, the person designated to be this “back-up” and receive the training was the school secretary, someone who typically has no medical background. One common complaint was that it was taking school secretaries much longer to complete the training than DPI suggested it would. Another common complaint was that this training was imposing an unfunded mandate on school districts since under collective bargaining agreements teachers and staff had to be compensated for the time they spent completing the required training.

A bigger concern, however, relates to the purpose for which the administration of medication statute was first enacted—that is, to ensure that students who need medication can receive them when they are in school. If a school found itself in a situation where there was nobody present on staff who had received the DPI-approved training due, for example, to staff illness or students being away from the school building (such as on a field trip), the school would face the dilemma that either someone would provide medication and risk potential liability or decide not to provide medication. Obviously, the latter choice would defeat the purpose for which the administration of medication statute was enacted—to ensure that pupils who need medication can receive that needed medication when they are at school.

Finally, less than a month before the March 1, 2011 effective date for all these changes drew near, the permanent DPI rules were not yet in place and significant questions were being raised.

School district health officials were raising concerns about the requirement that nonprescription medications must be provided by parents or guardians and must remain in the original packaging in order to be given to pupils. Under this requirement, a high school with 1,000 students might potentially have to keep track of 400 separate bottles of Ibuprofen or aspirin. School nurses could no longer dispense such common over-the-counter medications from a single stock bottle.

Concerns were raised that the rules as proposed would forbid the use of a common inhaled drug therapy—a nebulizer—to treat sudden asthma attacks if the students did not have their parent provided medication at hand. Concerns were also expressed that the rules would require them to switch to a more expensive delivery device for the drug epinephrine, used to treat severe allergic reactions.

As we looked into these concerns, we found that some related to the rules, but mostly the root of the concerns was with the language of 2009 Wisconsin Act 160 itself. In other words, in several cases, it was the language of the law rather than the rules that was at the root of the concerns.

The WASB and others shared these concerns with the chairs of the Senate and Assembly Education committees, Senator Luther Olsen and Representative Steve Kestell. They determined that the best approach to resolving these concerns was to introduce legislation to allow the Legislature to take a fresh look at the provisions that were passed last session and authored the bill that is before you this morning. Following a public hearing, they were able to determine which portions of the 2009 Wisconsin Act 160 language to keep and which to discard.

As you review the substitute amendment to Assembly Bill 62, the WASB urges you to keep in mind the central purpose of the administration of medication law; that is, to ensure that pupils who need to receive medications while they are in school can receive those medications and to structure the law in such a way that adults in schools are able to continue to do what is in the best interests of pupils.

Thank you for your time.