Does my child need a health care plan for school?

If your child has a health condition, they may or may not need a health care plan for school. There are two ways for children to have a health care plan:

- Children who DO qualify for special education may have a health care plan as part of their Individualized Education Program (IEP).
- Children who DO NOT qualify for special education may have a health care plan either as part of a 504 Accommodation Plan, or simply as a separate health care plan.
The most important thing to consider when deciding if your child needs a health care plan for school, is whether your child’s health condition impacts their ability to be safely in school, benefitting from their education. The following three questions can help you decide:

1. Does your child have any physical, or mental impairment?

2. Does this impairment substantially limit your child? This is critical—does the impairment substantially impact your child’s ability to be safely in school, benefitting from their education? There can be disagreement about whether something substantially limits someone but, in general, the more serious or life-threatening your child’s condition is, or the more permanent it is, the more likely it will be seen as a substantial limitation.

3. Does this impairment substantially limit one or more of your child’s major life activities? “Major-life activities” are
things such as caring for oneself, walking, breathing, learning, speaking, or working.

If you answered yes to these three questions, your child likely needs a health care plan for school. If you answered yes to at least ONE of these questions, your child may need a health care plan for school. Your school and your child's health care provider can help you to decide.

**Does every child who has a physical, or mental, impairment need a health care plan for school?**

No. If your child's condition is successfully managed outside of school, or has no impact upon their ability to be safely in school, benefitting from their education, then your child probably does not need a health care plan. However, if your child has a significant health condition that is normally addressed outside of school, your child might need an emergency health care plan. An emergency health care plan would only be used during an emergency that required children to stay in school past normal hours (e.g., a snowstorm). Parents of children with serious health conditions that are managed outside of school, may want to talk with their children's school nurse about establishing a plan for an emergency. This would need to be done on an individual basis.

**How should I ask the school for a health care plan for my child?**

Start by talking with your child's teacher and the school nurse. If your child receives special education services, you can also contact your child's special education coordinator. If your child does not qualify for special education, you can request a meeting with the school's 504 (or health) coordinator.

**What information do I need to request a health care plan for my child?**

You need information about how your child's physical or mental impairment impacts their ability to be safely in school, benefitting from their education. Your child's health care provider can help you gather this information. Try to give the school specific information about what your child's needs are, why they would be at risk without a health care plan, and why your child could have difficulty learning without a health care plan.

**What services and accommodations can be included as part of a health care plan?**

Health care plans can include services and accommodations that a child needs to be safely at school, benefitting from their education. Schools are obligated to provide all necessary services and/or accommodations with two exceptions:

- If the service or accommodation can be safely provided to your child outside of school, without impacting their ability to safely be in school, benefitting from their education, the school does not have to provide that service or accommodation.

- If the services or accommodation can only be provided by a physician, the school is not obligated to provide this unless it is needed to diagnose, or assess, your child's medically-related disability.
Services and accommodations can be as simple as extra time to complete exams, or a preferred seating assignment. They can also involve a tracheotomy care and suctioning, or administration of medication. They must reflect your child’s individual needs. The school district will likely require that your child’s health care provider agree with the services and accommodations that are part of your child's health care plan.

Who pays for the health care services and accommodations that my child receives at school?

The school district is ultimately responsible for paying for the services and accommodations that your child needs for his health care plan. This includes any adaptive equipment specified in their IEP, or 504 accommodation plan, that helps them access their education (e.g., assistive communication devices, or positioning equipment). However, the school district does not have to pay for your child’s medication, or for their personal medical equipment (e.g., oxygen tanks, or suctioning device).

Can the school district use Medicaid, or our private insurance, to pay for these services and accommodations?

The school district is ultimately responsible for paying for the services and accommodations in your child’s health care plan. However, the school district may ask for your permission to bill either Medicaid, or your private insurance, for some of the services and accommodations. However, the school district can only use your Medicaid, or private insurance if this does not:

• decrease your child’s overall lifetime coverage, or any other insured benefit.
• make your family pay for services that would otherwise be covered by Medicaid, and are required by the child when he is not in school.
• increase your premiums or lead to the discontinuation of insurance.
• require you to pay deductibles under your private health insurance.
• put your family at risk of losing their eligibility for other waivers based on your overall health care expenditures.

If you have any questions regarding the use of Medicaid, or your private insurance, by a school district, contact Medicaid at (800) 662-9651 or visit website.

If your child has private insurance, the school district may ask you if they can bill your private insurance for some of your child’s services and accommodations. Before you agree, check with your insurer. Make sure that paying for a service or accommodation will not change your family’s insurance benefits or coverage. Each time the school district wants to bill your private insurance for any of your child’s services or accommodations, they must first obtain your permission. Once you’ve given permission, track what is being billed in your child’s name (e.g. are these charges for services or accommodations that your child receives at school?).

What should I do if my child's physical, or mental, impairment changes?
Open communication between you and your child’s school is critical to making your child’s health care plan work. You need to tell your child’s school about any significant change in your child’s health as soon as possible because their health care plan may need to be changed. If your child is unable to communicate with others, then you need to let the school know about any changes in your child’s health, even if it is minor or temporary (e.g., a cold).

**How is the privacy of my child's medical information protected?**

The Health Insurance Portability and Accountability Act (HIPAA) usually protects the privacy of your child’s medical records. However, when you give a copy of your child’s medical records to their school, the records are no longer protected by HIPAA but, they become protected by the Family Education Rights and Privacy Act (FERPA). FERPA strictly limits the number of people who can see any of your child’s educational records, including your child's medical needs. Most school personnel do not need to see your child's medical records. However, the people who work with your child need to know about your child's health care plan. Your child’s teachers need to have a copy of the health care plan accessible at all times while your child is in school. Some teachers keep a copy in a locked file cabinet in their classrooms; other teachers will keep a copy on file in the school's office. Regardless, they need to be aware of your child’s health care plan.

**If my child has a health care plan, will they always need it?**

Not necessarily. If your child’s health changes, the services and accommodations in his health care plan may no longer be necessary. The decision to change the health care plan or discontinue the health care plan must be based up your child’s unique situation. The opposite can also be true. Your child may not need a health care plan right now but if their condition changes over time, they may come to need a health care plan in the future.

**Disagreements About Your Child’s Health Care Plan**

If you believe that your child needs a health care plan, and the school district says “no”, what can you do? First, ask the school district to give you their reasons for saying “no”. Submit your request in writing, include specific information about why you think your child needs a health care plan for school, and ask the school district for a written response. The school district is obligated to respond to you. Read and consider their response carefully. If you have information about your child that you think was not considered in the school’s decision, let the school know. If you think that the school district considered all the important information but you still disagree with their decision, then follow the steps below.

1. Ask your child’s health care provider if they believe your child needs a health care plan for school. If they say “yes”, ask them to help you with your request. If they say “no”, ask them why a health care plan for school is not necessary. You might have a misunderstanding of how your child’s health should be managed at school.

2. If your child has an IEP, request an IEP meeting to discuss your concerns. You can then appeal your child’s IEP if you disagree with it. The school district will provide you with information about the procedural safeguards that are in place to protect you and your child.

3. If your child does not qualify for an IEP, and you disagree with the decision not to provide your child with a 504
accommodation plan, contact the school district’s 504 plan (or health) coordinator to begin the due process procedure to appeal the school’s decision.

4. All parents also have the right to file a complaint with the U.S. Department of Education’s Office of Civil Rights (OCR) if they feel that their child has been discriminated against as a result of their disability. The OCR website has information about how to file a complaint.

Keep in mind that if you appeal the District’s decision, the process will not be quick. A complaint to the OCR will take even longer.

If you think that your child needs a particular service or accommodation, and the school district says they will not include it in the health care plan, what can you do?

The first thing to do is ask your child’s health care provider whether the service or accommodation is necessary for your child to be safely in school, benefiting from their education. If the provider says “yes”, ask him to help you with your request. If the provider says “no”, ask him why the service, or accommodation, is not necessary. You might have a misunderstanding of how your child’s health should be managed at school. If your child has an IEP, request an IEP meeting to discuss your concerns. You can appeal your child’s IEP if you disagree with it. If you child has a 504 accommodation plan, contact the school district’s 504 plan (or health) coordinator to begin the due process procedure to appeal the school’s decision. If you feel your child has been discriminated as a result of a disability, you have the right to file a complaint with the U.S. Department of Education’s Office of Civil Rights (OCR).

Can the school district make your child attend a particular school in order to receive health care services?

Children who qualify for special education services must be educated in the “least restrictive environment” which may be their neighborhood school, depending on their individual needs. There is a priority for keeping your child in the neighborhood school however, this is not a right. The decision to place a child in a particular school in order for that child to receive health care services must be made only as part of a comprehensive plan that focuses on how to best educate that child. Regardless of where a child is attending school, the child’s education plan must reflect the educational needs of that child.

What should you do if your child’s teacher is not following your child’s health care plan?

This depends on the situation. If the teacher is not following a part of the health care plan that involves a potentially life-threatening issue, contact your child’s school IMMEDIATELY. Work with your child’s teacher, and principal, to resolve the issue. Contact your school district’s superintendent, or the Utah State Office of Education (USOE), at (801) 538-7500, if you cannot reach a solution at the school level. If the teacher is not following a more ‘routine’ part of your child’s health care plan, start by asking your child’s teacher why this is happening. This may be a misunderstanding; someone who works with your child may either not have seen the health care plan, or may not understand why it is important. Problems with health care plans may be more likely in junior or senior high school
when children have many teachers throughout the day. If these efforts are unsuccessful, and your child has an IEP, contact your child’s IEP coordinator to discuss the problem. If your child has a 504 accommodation plan, contact the school district’s 504 plan (or health) coordinator. Focus on identifying what the problem is—is it only one teacher, or during one particular time of day? Or is it a larger problem where the entire health plan is being ignored? Identify what needs to happen for the health care plan to work. If you are unsuccessful at resolving the problem at this level, you have several options:

- Contact the Utah State Office of Education (USOE) to begin one of their official complaint procedures. If your child has a Section 504 accommodation plan, or a ‘stand-alone’ health care plan, you can contact USOE to begin due process.
- Contact the U.S. Department of Education’s Office of Civil Rights (OCR) if you believe your child has been discriminated against due to a disability.
The Disability Law Center (DLC) is a private, non-profit organization, designated by the governor as Utah's Protection and Advocacy agency. The DLC believes in a society where abilities, rather than disabilities, are recognized; all people have an equal opportunity to participate; and where all people are treated with equity, dignity, and respect. We work toward our vision by enforcing and advancing the legal rights, choices, and opportunities of Utahns with disabilities. DLC services are available free of charge statewide, regardless of income, legal status, language, or place of residence.

If you have further questions, please contact us. Even though our focus is on cases that can help as many people as possible - because time and resources are limited - we at least offer information and/or referral options to everyone who contacts us. Materials are also available in alternative formats such as audio, large-print, Braille and Spanish. Call (800) 662-9080 or apply for help online, and our staff will contact you within 1-3 business days.

View this Resource Online
https://disabilitylawcenter.org/?p=180