

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: SB 75a

51st Legislature, 2nd Session, 2014

Tracking Number: .195376.2

Short Title: Emergency Medications in Schools

Sponsor(s): Senator Mark Moores

Analyst: Kevin Force

Date: February 7, 2014

AS AMENDED

The Senate Public Affairs Committee Amendments:

- **in the title of the bill, remove reference to immunity from civil liability for good faith compliance with the provisions of the act;**
- **include private schools in the provisions of the act, by adding definitions for:**
 - **“governing body,” which means a governing body of a charter school or private school; and**
 - **“school,” which means a public or private school;**
- **remove all instances of language that would otherwise limit references to “governing bodies” to those affiliated with charter schools;**
- **reverse the order of certain actions when assisting a student afflicted with respiratory distress or anaphylaxis, so that administration of the appropriate emergency medication immediately precedes calling 911 to initiate an emergency medical system; and**
- **remove the section of the bill which would have relieved persons of potential civil liability when acting in good faith compliance with the provisions of the act to assist a student suffering from respiratory distress or anaphylaxis.**

Original Bill Summary:

Senate Bill 75 proposes to create new sections of the *Public School Code* and the *Public Health Act*, to allow for emergency administration of medication for asthma and anaphylaxis in schools.

A section-by-section synopsis of the bill follows:

Section 1. [Short Title.] Sections 1 through 4 of the bill, which create new sections of the *Public School Code*, are to be called the *Emergency Medications in School Act*.

Section 2. [Definitions.]

SB 75 defines a number of terms for purposes of the act, including:

- “emergency medication,” which means albuterol or epinephrine;
- “respiratory distress,” which includes impaired oxygenation of the blood or ventilation of the respiratory system; and
- “trained personnel,” which means school employees, agents or volunteers who complete epinephrine administration training documented by the school nurse, school principal or school leader and approved by the Department of Health (DOH), and who has been designated by the school principal or school leader to administer epinephrine on a voluntary basis outside the scope of employment.

Section 3. [Emergency medication – albuterol – epinephrine – stock supply – storage.]

- Each local school board or charter school governing body may obtain a standing order for a stock supply of emergency medication prescribed to the school or the district by a medical practitioner employed or authorized by DOH. These medications must be stored:
 - in a secure place, that is unlocked and readily accessible to trained personnel;
 - according to Board of Pharmacy regulations; and
 - within the manufacturer-recommended temperature range.
- School boards and governing bodies shall dispose of expired medication according to Board of Pharmacy or DOH rules.
- Each local school board or governing body, or a school within its jurisdiction, may accept gifts, grants, bequests, and donations from any source to fulfill the provisions of the act, including acceptance of aerosol canisters and auto-injectors from manufacturers or wholesalers.

Section 4. [Local school board or governing body of a charter school – emergency medication – protocols and policies – training.]

- All local school boards and governing bodies that provide emergency albuterol to schools under their control shall develop policies for a school nurse, or other person authorized by DOH, to administer albuterol to a student in apparent respiratory distress, even absent documentation of having asthma or a prescription for the medication. These policies shall include:
 - calling for emergency medical services;
 - notifying the parent or guardian of the student in distress; and
 - monitoring the student and delivering additional treatment indicated until emergency services arrive.
- All local school boards and governing bodies that provide epinephrine to their schools must:
 - develop and publish policies based on DOH rules and recommendations, as well as the protocols required by the act; and
 - receive documentation that their trained personnel have received necessary instruction to:

- administer epinephrine to students reasonably believed to be suffering from anaphylaxis, even absent documentation of having severe allergies or a prescription for epinephrine;
 - follow anaphylaxis protocols to recognize the symptoms, summon emergency medical services, notify the parent or guardian of the stricken student, monitor and continue to treat the student until the arrival of emergency services.
- Each school that receives auto-injectors must develop a plan to:
 - have at least one trained staff person on school premises during operating hours; and
 - follow an anaphylactic prevention protocol recommended by DOH to minimize an allergic student’s potential exposure to food allergens.

Section 5. [Emergency medication in schools – albuterol – epinephrine – rules – recommendations.]

- By July 1, 2014, DOH is to promulgate rules for the prevention and treatment of respiratory distress and sudden anaphylaxis with the administration of albuterol or epinephrine, including the maintenance, storage, and disposal of medications kept in stock supplies by the schools.
- Medical practitioners employed or authorized by the DOH may prescribe, and pharmacists may dispense, a stock supply of albuterol canisters and epinephrine auto-injectors in the name of a school or school district.
- DOH may obtain and receive gifts, grants, appropriations, and donations from any source, including acceptance of albuterol canisters and auto-injectors.

Section 6. [Administration of emergency medication – epinephrine – immunity from civil liability.]

Administration, prescription, purchase, receipt, maintenance, or provision of epinephrine to a person reasonably believed to be suffering from anaphylaxis shall not result in any liability for damages, and does not constitute the practice of medicine. This immunity does not apply to gross, willful, or wanton negligence.

Original Fiscal Impact:

SB 75 does not contain an appropriation.

Original Fiscal Issues:

According to the Public Education Department (PED) analysis of HB 52, a bill identical to SB 75:

- While SB 75 provides for school districts and charter school governing bodies to accept gifts, grants, donations, and bequests from any source to offset costs of procuring medications, it does not contain an appropriation, rendering it unclear who would absorb the costs associated with maintaining a stock supply of emergency medications if other funding sources are insufficient.

- Inclusion of disposal of expired and outdated medication in stock supplies may be costly to school districts and governing boards.
- There will be no fiscal impact to PED.

According to the Regulations and Licensing Department (RLD), schools or DOH may be required to expend funds to acquire the medications required by the provisions of the act. The average total cost for one unit of each medication is \$425.50:

- Albuterol inhaler: \$52.48;
- Albuterol spacer: \$8.34;
- Epinephrine pediatric auto injector: \$182.34; and
- Epinephrine auto injector: \$182.34.

Original Technical Issues:

PED notes that the bill does not define “the department” as the Department of Health, and suggests amending the bill to include an additional definition clarifying the term.

RLD indicates that the bill mandates that stock supplies of emergency medications be kept “in a secure location that is unlocked,” begging the question how a location can be both unlocked and secure.

Original Substantive Issues:

According to PED:

- The bill requires DOH to promulgate rules for the administration of the act by July 1, 2014, which may be insufficient time to complete the rulemaking process. PED suggests extending the deadline to December 31, 2014.
- The 2011-2012 Annual School Health Services Report, the most common prescription medications provided for students at school included asthma medications, at 39 percent, and epinephrine, at 8.0 percent.
- SB 75 allows for emergency administration of epinephrine and albuterol to students who have not been diagnosed previously with either allergies or asthma, as well as students who have been so identified.
- This legislation also provides immunity from civil liability to persons who act in good faith compliance with the provisions of the act when administering epinephrine to a student in an emergency.
- SB 75 effectively requires schools and districts to:
 - provide a school-specific location for secure storage of the medication;
 - develop policies and procedures for:
 - the recognition of symptoms typical to anaphylaxis or asthmatic respiratory distress;
 - initiating an emergency medical system;
 - administering the medication; and
 - notifying parents and guardians;

- publish these policies and procedures on their websites; and
- receive documentation that personnel had received the necessary training.
- Public schools already maintain protocol for *self*-administration of albuterol and epinephrine by students, as established in the *School Health Manual* (see, “Background,” below).

According to DOH:

- The DOH Asthma Program indicates that the prevalence of asthma among New Mexico youth, from birth to 17 years, has been increasing since 2003:
 - In 2003, about 7.5 percent of youth had asthma, which has increased to 10.4 percent as of 2011.
 - Asthma is the third leading cause of hospitalization for youths in New Mexico and the fourth leading cause of emergency room visits.
 - Approximately 43 percent of affected youths said they missed at least one day of school in the past 12 months as a result of their asthma.
- The Food Allergy Research Education (FARE) indicates that:
 - one in 13 children has a food allergy, or approximately two in every classroom;
 - acute anaphylaxis due to allergic reactions occurs in only a small number of children annually, however such occurrences are often fatal; and
 - about 25 percent of severe and potentially life-threatening anaphylaxis cases reported at schools happened in children with no previous diagnosis of food allergy.¹
- A 2013 survey conducted by the New Mexico School Nurses Association showed that:
 - nearly 71 percent of school nurses in the state would have used a stock albuterol inhaler in an emergency if one had been available;
 - 28 percent would have used an epinephrine auto-injector; and
 - 71 percent of school nurses reported working in a rural area where it was common for emergency services to take up to 45 minutes to arrive at their school in response to an emergency.

LFC staff note that, regarding the immunity from civil liability afforded by SB 75, it:

- extends to individuals who administer medication in the case of anaphylaxis, but not respiratory distress, potentially exposing school personnel who administer albuterol in emergency situations to liability; and
- is not limited to persons acting under the provisions of the act, but may allow any individual who prescribes, receives, purchases, maintains, or administers emergency anaphylaxis medication to claim immunity.

¹ See, http://www.cdc.gov/healthyyouth/foodallergies/pdf/13_243135_A_Food_Allergy_Web_508.pdf.

According to RLD:

- While the provisions of the bill would authorize pharmacies and wholesale drug distributors to provide prescription drugs to schools, pharmacies and wholesalers will not sell to such unlicensed entities.
- The medical and nursing boards would have to modify their unprofessional conduct rules to allow for standing orders for medications in schools.²
- Current law requires a proper license in order to acquire and possess prescription drugs.³
- This bill would authorize unlicensed individuals to administer prescription drugs to children without requiring consent from parents.

According to the Medical Board:

- SB 75 fails to specify the importance of advance planning in the provision of relevant medical history, including:
 - the patient’s prior treatment of respiratory distress or anaphylaxis due to allergy;
 - advance informed consent; and
 - a relevant medical history from the parent, guardian, or legal custodian.
- While SB 75 states that treatment with epinephrine “does not constitute the practice of medicine,” when, in fact, it is medicine requiring appropriate training to provide. (It is, however, within the scope of practice of an appropriately trained school nurse or an appropriately trained surrogate authorized by the school nurse or DOH.)

Background:

The *New Mexico School Health Manual* was developed to provide recommendations and guidelines to school nurses and other school health personnel for coordinated school health practices and programs throughout New Mexico.⁴ The *Manual* indicates that all medications should be administered by a PED-licensed school nurse, although they may delegate this authority to qualified unlicensed persons. Current law in New Mexico is largely silent on the issue, although several pertinent statutes do exist:

- **Section 22-5-4.3 NMSA, School discipline policies; students may self-administer certain medications**, which allows for the *self-administration*, by students, of medicines to counter the effects of asthma and anaphylaxis, under certain conditions;⁵
- **Section 24-10-1 NMSA, Emancipated minors; hospital, medical and surgical care**, which addresses the specific issue of consent to medical care of emancipated or legally married minors; and
- **Section 24-10-2 NMSA, Consent for emergency attention by person *in loco parentis***, which, notwithstanding any other provision in law, allows for a person standing *in loco parentis* to a minor to consent to emergency medical attention when the minor’s parents cannot be located after reasonable efforts, under the circumstances, have been made to find them.

² See 16.10.8.8(L) NMAC.

³ See 26-1-16 NMSA 1978.

⁴ See, <http://www.nmschoolhealthmanual.org/>.

⁵ See also 6.12.2.9 NMAC, Student’s Right to Self-Administer Certain Medications.

According to the *Manual*:

“For medication administration to take place during school hours, each local education agency should adopt a written policy to meet local needs regarding both prescription and non-prescription drugs. The State of New Mexico *Nursing Practice Act Rules*⁶ should be followed . . . To ensure that students are medicated at school under maximum protection, the following guidelines should be followed:

- An authorization to administer prescription medication, signed and updated annually by both the student’s primary health care provider and parent/guardian should be on file at the school.
- This authorization form should be approved by the local School Board.
- Authorization forms apply to both prescription and non-prescription medications.
- The signed medication authorization form should be reviewed and approved by the PED-licensed school nurse in the school district.
- A parent/guardian should provide the school with a pharmacy-labeled container or original manufacturer’s/provider’s container that holds the appropriate medication to be administered in the school setting.
- Unused medication should be disposed of or returned according to written District School Board policy.”⁷

Further, concerning emergency medications:

“School districts are encouraged to have written policies and procedures regarding the administration of emergency medications in the school setting as part of the routine medication policies and procedures, as well as in the school district’s emergency plan.

While schools are not expected to function as emergency care centers, there are students at high risk for life-threatening situations and for whom access to prescribed emergency medications may be life-saving. Policies and procedures for providing emergency care in the school setting in the absence of a licensed school nurse should be included in the school emergency plan.”⁸

Some guidelines for consideration of school district policies and plans include:⁹

- consideration of the most common emergency medications, such as those for anaphylaxis, asthma, and diabetes, like epinephrine, albuterol, glucagon, seizure medications, oxygen, and insulin, for which a student’s healthcare provider should write orders, providing clear guidance regarding the circumstances and manner under which the medications should be administered;
- identification of unlicensed personnel trained to assist with such medications in the absence of a school nurse;

⁶ The New Mexico *Nursing Practice Act* is Chapter 61, Article 3 NMSA; the accompanying rules are at 16.12.2 NMAC.

⁷ New Mexico School Health Manual, Section VI, p. 3.

⁸ Id., p. 8.

⁹ Id., p. 9.

- recommended responses to emergency situations, including, where appropriate, recourse to 911 emergency services;
- inclusion of acceptable and safe emergency intervention procedures and parameters, including consideration of *loco parentis* designation, in student Individualized Health Plans (IHPs), which require signatures of both parents and responsible school staff; and
- potential legalities involved in *not* responding with available emergency medication, as well as the potentially complicated legal and ethical issues attendant upon keeping such medications on school premises, particularly liability that may lie when a person chooses to act or not to act in these sorts of circumstances.

According to the 2011 *New Mexico Youth Risk and Resiliency Survey (YRRS)*:¹⁰

- 11.8 percent of high school students in New Mexico report having asthma, with:
 - 13.1 percent of female students reporting the condition; and
 - 10.6 percent of male students reporting;
- 10.1 percent of New Mexican middle school students reported asthma; and
- there was no statistically significant difference between:
 - rates of asthma among middle school students now and those reported in the 2009 survey;
 - boys and girls;
 - different grade levels;
 - different ethnicities; or
 - school performance.

DOH notes that:

- SB 75 follows national legislation passed this fall,¹¹ which acknowledged the importance of school personnel's ability to administer epinephrine in emergency situations;
- states that have this emergency epinephrine consideration in place qualify for additional preference for asthma-related federal grants;
- SB 75 builds on the national legislation by including albuterol for use with students with asthma related symptoms or respiratory distress; and
- the New Mexico Council on Asthma, was directly involved in the development of identical HB 52, and proposes a voluntary approach to ensure timely enactment of the provisions.

Committee Referrals:

SCC/SPAC/SJC

¹⁰ The YRRS is a biannual survey of New Mexican high school and middle students conducted in odd-numbered years, as part of the national CDC Youth Risk Behavior Surveillance System. The results of each survey are generally available and published in the summer or fall of the year following the survey, and cover a range of topics, including general health, alcohol and drug use, violence, suicide, bullying, nutrition, etc.

See: <http://www.youthrisk.org/>.

¹¹ Public Law 113-48, 113th Congress

Related Bills:

*HB 49 *School Use of Emergency Medications*
HB 52a *School Administration of Emergency Medication (Identical)*
HB 53 *Students Carrying Emergency Medication*