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## FISCAL IMPACT REPORT

ORIGINAL DATE 01/31/14

SPONSOR Egolf LAST UPDATED \_\_\_\_\_ HB 279

SHORT TITLE School Administration of Emergency Medication SB \_\_\_\_\_

ANALYST Armstrong

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		
	Minimal		

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 52 and HB 53

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Regulation and Licensing Department (RLD)  
 Department of Health (DOH)  
 Attorney General's Office (AGO)  
 Administrative Office of the Courts (AOC)  
 Medical Board (MB)  
 Board of Nursing (BN)  
 Public Education Department (PED)

### SUMMARY

#### Synopsis of Bill

House Bill 279 creates new sections in the Public School Code and the Public Health Act requiring schools to stock and provide or administer emergency medication to treat students apparently suffering from respiratory distress or anaphylaxis. This bill requires school boards and governing bodies of charter and private schools to provide its schools with albuterol and epinephrine, or other appropriate emergency medications as recommended by DOH. HB 279 also calls for disposal of expired emergency medication pursuant to DOH or Board of Pharmacy regulations.

The bill requires local school boards and governing bodies of charter and private schools to promulgate policies to: (1) recognize the symptoms of respiratory distress and anaphylaxis; (2) immediately initiate an emergency medical system response; (3) have a school nurse or other

authorized person administer emergency medication; (4) notify the student's parent or guardian; and (5) continue to monitor the student's condition and deliver any additional treatment indicated until an emergency responder arrives. The policies regarding epinephrine must be published on the board or governing body's website. Schools must have at least one personnel trained to administer emergency medications on the premises during operating hours. HB 279 also requires training of individuals involved in handling or overseeing the service or consumption of food on school premises regardless of whether the person has received training to administer epinephrine. This training must include information about food allergies, conditions that may cause an anaphylactic reaction, reducing and eliminating such conditions, and recognizing the symptoms of anaphylaxis.

HB 279 calls for administering these emergency medications to students reasonably believed to be experiencing respiratory distress or anaphylaxis regardless of whether the student has been diagnosed with asthma or a severe allergy. The bill provides limited immunity from civil liability for individuals prescribing, purchasing, receiving, maintaining, providing, or administering emergency medication to a person reasonably believed to be experiencing anaphylaxis. The bill also states that such actions do not constitute the practice of medicine. The immunity does not apply to gross, willful, or wanton negligence.

The bill tasks school districts and governing bodies with reporting, on a form provided by DOH, any incidents involving respiratory distress, anaphylaxis, or administration of emergency medication. Additionally, school districts and governing bodies must report on the number and dates of trainings pursuant to and the implementation of this bill. Finally, DOH must provide the Legislature with a summary and analysis of its promulgated rules and the information received from school districts and governing bodies.

## **FISCAL IMPLICATIONS**

The bill does not contain an appropriation, however, PED states that it carries "moderate" costs to school districts' and charter schools' operational budgets.

## **SIGNIFICANT ISSUES**

HB 279 authorizes health care practitioners employed or authorized by DOH to prescribe emergency medications to a school or school district, and allows pharmacists to fill such prescriptions. However, according to RLD and AGO analysis, pharmacies and wholesalers will not sell to unlicensed entities, e.g. schools and school districts. Moreover, RLD states that HB 279 would require the medical and nursing boards to modify their unprofessional conduct rules to allow standing orders for medications in schools. See 16.10.8.8.L. NMAC. AGO and RLD also state that 26-1-16 NMSA 1978 requires proper licensure to acquire and possess prescription drugs, and that HB 279 authorizes unlicensed individuals to receive and administer prescription drugs to children without requiring consent from parents.

The immunity provided by HB 279 does not extend to respiratory distress. This may expose a school nurse or other authorized individual to liability if a student is apparently suffering from respiratory distress, but has an allergic or other adverse reaction to the provided albuterol. Moreover, the immunity is not limited to individuals acting pursuant to the bill's additions to the Public School Code and the Public Health Act. This may allow any individual administering emergency medication for apparent anaphylaxis to claim immunity.

## **ADMINISTRATIVE IMPLICATIONS**

HB 279 would require additional staff time to participate in the development and implementation of policies and the distribution of emergency medications in schools. The bill requires DOH to develop rules and make recommendations for each school district and governing body of a charter school electing to provide emergency medication. These rules must address administering albuterol and epinephrine, preventing and treating respiratory distress and anaphylaxis, the requirement that one or more trained personnel is on school premises during operating hours, maintenance and storage of emergency medications, and the disposal of expired emergency medication.

## **RELATIONSHIP**

House Bill 49 is a near duplicate of HB 279, however, HB 49 appropriates \$400 thousand to carry out its provisions and HB 279 requires anaphylaxis training for individuals involved in handling or overseeing the service or consumption of food on school premises regardless of whether the person has received training to administer epinephrine. Moreover, HB 279 imposes reporting requirements on school districts and governing bodies whereas HB 49 does not.

House Bill 52 and Senate Bill 75 are very similar to HB 279. The major difference is HB 52 and SB 75 allow school boards and governing bodies to decide to provide emergency medication while HB 279 requires this of them. Senate Bill 165 duplicates Sections one through five of Senate Bill 75 and House Bill 52. However, SB 165 does not provide immunity to individuals providing epinephrine to students apparently suffering anaphylaxis.

House Bill 53 removes language from the School Discipline Policies section of the Public School Code and adds a new section with a similar effect. The bill allows students to carry and self-administer emergency medication for the treatment of asthma, respiratory distress, or anaphylaxis.

## **TECHNICAL ISSUES**

Section 2(M) defines “trained personnel” to include a school nurse, school principal, or “school leader.” However, the term “school leader” is not defined.

## **OTHER SUBSTANTIVE ISSUES**

According to DOH analysis, a 2013 survey by the New Mexico School Nurses Association showed a majority of school nurses (70.8 percent) in the state would have used a stock albuterol inhaler in an emergency situation, and 28 percent would have used an epinephrine auto-injector, if available. Most school nurses (71 percent) reported working in rural schools where it is not uncommon for emergency medical services to take 45 minutes or longer to respond. As of 2011, 10.4 percent of New Mexico’s children have asthma and approximately two students in every classroom have food allergies. Acute anaphylaxis due to allergic reactions occurs in a small number of children annually, however, it is frequently fatal. One-quarter of the severe and potentially life-threatening reactions (anaphylaxis) reported at schools happened in children with no previous allergy diagnosis.

**ALTERNATIVES**

According to AGO analysis, the Board of Pharmacy could work with DOH, the Medical Board, the Board of Nursing and schools to provide for licensing that would specifically permit schools to establish an emergency medications in schools program.

JA/ds