

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 53

51st Legislature, 2nd Session, 2014

Tracking Number: .195454.1

Short Title: Students Carrying Emergency Medication

Sponsor(s): Representative Yvette Herrell

Analyst: Kevin Force

Date: January 30, 2014

Bill Summary:

House Bill 53 creates a new section of the *Public School Code* (by removing similar language from Section 22-5-4.3 NMSA 1978 and placing it, with some differences, in the new section) that:

- allows students, with parental permission and in compliance with school procedures, to carry and self-administer emergency medication for the treatment of asthma, respiratory distress, or anaphylaxis;
- requires a treatment plan, either written or approved by the student's healthcare provider, to be filed with the school; and
- allows backup medication to be provided by the student's parent or guardian, to be stored at school according to the Board of Pharmacy regulations.

Fiscal Impact:

HB 53 does not contain an appropriation.

Substantive Issues:

As noted by the Fiscal Impact Report from the Legislative Finance Committee:

- students in New Mexico have been allowed to carry and self-administer asthma and anaphylaxis medications since 2005, under Public Education Department (PED) rule¹;
- HB 53 proposes to add respiratory distress to the conditions that would be covered by this rule; and
- The *School Health Manual* (see "Background," below), maintained by the Department of Health (DOH) Office of School and Adolescent Health, provides protocols and guidance for self-administration of emergency medication by students.

DOH indicates that:

- this law is essential to the well-being of students who suffer from the listed conditions, as even with routine use of prescribed medications to control asthma or anaphylactic reactions, emergency situations will still arise;

¹ 6.12.2.9 NMAC, "Student's Right to Self-Administer Certain Medications"

- asthma is reported by the department as one of the common chronic diseases of childhood that results in significant annual absenteeism;
- schools that have refused to allow students to self-carry their asthma medication have experienced student deaths, and resulting litigation;
- acute anaphylaxis due to allergic reactions occurs in a small number of children annually, however it is frequently a fatal condition; and
- allowing students at risk for anaphylaxis to carry their epinephrine auto-injector pens is an important life saving policy.

PED notes that:

- according to National Center for Health Statistics, more than six million American children under 18 have asthma, making it one of the most common chronic diseases among children;²
- according to 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 8.0 percent;³
- public schools would need to ensure that these emergency medications and the accompanying documentation are filed, maintained, and readily accessible in the event that a student has an asthma attack, respiratory distress, or anaphylaxis; and
- public schools currently maintain such a protocol for the self-administration of asthma and anaphylaxis medications.

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: <http://www.cdc.gov/nchs/pubs/pubd/hestats/asthma/asthma.htm>.

³ See: <http://ped.state.nm.us/sfsb/reports/2013/2011-2012%20Annual%20School%20Health%20Services%20Summary%20Report%20Brochure.pdf>.

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 healthcare 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.

Committee Referrals:

HRC/HHGIC/HEC

Related Bills:

*HB 49 *School Use of Emergency Medications*

HB 52 *School Administration of Emergency Medication* (Identical to SB 75)

SB 75 *Emergency Medications in Schools* (Identical to HB 52)

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/>.