

SENATE AMENDMENTS

2nd Printing

By: Brown

H.B. No. 1615

A BILL TO BE ENTITLED

AN ACT

relating to the administering of medications to children in certain facilities; providing criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. This Act shall be known as Nathan's Law.

SECTION 2. Subchapter C, Chapter 42, Human Resources Code, is amended by adding Section 42.065 to read as follows:

Sec. 42.065. ADMINISTERING MEDICATION. (a) In this section, "medication" means a drug that may be obtained with or without a prescription, excluding a topical ointment obtained without a prescription.

(b) This section applies only to a day-care center, group day-care home, before-school or after-school program, school-age program, or family home regardless of whether the facility or program is licensed, registered, or listed.

(c) A director, owner, operator, caretaker, employee, or volunteer of a child-care facility subject to this section may not administer a medication to a child unless:

(1) the child's parent or guardian has submitted to the child-care facility a signed and dated document that authorizes the facility to administer the medication for not longer than one year; and

(2) the authorized medication:

(A) is administered as stated on the label

1 directions or as amended in writing by a physician; and

2 (B) is not expired.

3 (d) Notwithstanding Subsection (c)(1), a director, owner,
4 operator, caretaker, employee, or volunteer of a child-care
5 facility subject to this section may administer medication to a
6 child under this section without a signed authorization if the
7 child's parent or guardian submits to the child-care facility an
8 authorization in an electronic format that is capable of being
9 viewed and saved. An authorization under this subsection expires
10 on the first anniversary of the date the authorization is provided
11 to the child-care facility.

12 (e) This section does not apply to a person that administers
13 a medication to a child in a medical emergency to prevent the death
14 or serious bodily injury of the child if the medication is
15 administered as prescribed, directed, or intended.


16 (f) A person commits an offense if the person administers a
17 medication to a child in violation of this section. If conduct
18 constituting an offense under this section also constitutes an
19 offense under a section of the Penal Code, the actor may be
20 prosecuted under either section or both sections.

21 (g) An offense under this section is a Class A misdemeanor.

22 SECTION 3. This Act takes effect September 1, 2011.

ADOPTED


MAY 19 2011


Secretary of the Senate

H.B. No. 1615

By: BROWN

Substitute the following for H.B. No. 1615:

By: 

C.S. H.B. No. 1615

A BILL TO BE ENTITLED

AN ACT

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SECTION 1. This Act shall be known as Nathan's Law.

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(b) This section applies only to a day-care center, group day-care home, before-school or after-school program, school-age program, or family home regardless of whether the facility or program is licensed, registered, or listed.

(c) A director, owner, operator, caretaker, employee, or volunteer of a child-care facility subject to this section may not administer a medication to a child unless:

(1) the child's parent or guardian has submitted to the child-care facility a signed and dated document that authorizes the facility to administer the medication for not longer than one year; and

(2) the authorized medication:

(A) is administered as stated on the label directions or as amended in writing by a practitioner, as defined by Section 551.003, Occupations Code; and

(B) is not expired.

(d) Notwithstanding Subsection (c)(1), a director, owner, operator, caretaker, employee, or volunteer of a child-care facility subject to this section may administer medication to a child under this section without a signed authorization if the child's parent or guardian:

(1) submits to the child-care facility an authorization in an electronic format that is capable of being viewed and saved;
or

(2) authorizes the child-care facility by telephone to administer a single dose of a medication.

(e) An authorization under Subsection (d)(1) expires on the first anniversary of the date the authorization is provided to the child-care facility.

(f) This section does not apply to a person that administers a medication to a child in a medical emergency to prevent the death or serious bodily injury of the child if the medication is administered as prescribed, directed, or intended.

(g) A person commits an offense if the person administers a medication to a child in violation of this section. If conduct constituting an offense under this section also constitutes an

offense under a section of the Penal Code, the actor may be prosecuted under either section or both sections.

(h) An offense under this section is a Class A misdemeanor.

SECTION 3. This Act takes effect September 1, 2011.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 20, 2011

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB1615 by Brown (Relating to the administering of medications to children in certain facilities; providing criminal penalties.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would amend the Human Resources Code, Chapter 42, by adding Section 42.065, relating to administering medication by daycare providers, including licensed centers and licensed, registered, or listed homes. The statute defines medication and provides requirements for the distribution of a medication to a child by certain facilities. The statute would also create an offense if a person administers a medication to a child in violation of this section, which would be a Class A misdemeanor. If conduct constituting an offense under this section also constitutes an offense under a section of the Penal Code, the actor may be prosecuted under either section or both sections.

The Department of Family and Protective Services (DFPS) states that implementation of the bill would require amendments to rules, the creation of policies and procedures, and the addition of an indicator to the data system showing which providers administer medications. DFPS indicates the bill would be implemented within existing resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 530 Family and Protective Services, Department of

LBB Staff: JOB, SD, NB, CL, MB, VJC

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 16, 2011

TO: Honorable Jane Nelson, Chair, Senate Committee on Health & Human Services

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB1615 by Brown (Relating to the administering of medications to children in certain facilities; providing criminal penalties.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Human Resources Code, Chapter 42, by adding Section 42.065, relating to administering medication by daycare providers, including licensed centers and licensed, registered, or listed homes. The statute defines medication and provides requirements for the distribution of a medication to a child by certain facilities. The statute would also create an offense if a person administers a medication to a child in violation of this section, which would be a Class A misdemeanor. If conduct constituting an offense under this section also constitutes an offense under a section of the Penal Code, the actor may be prosecuted under either section or both sections.

The Department of Family and Protective Services (DFPS) states that implementation of the bill would require amendments to rules, the creation of policies and procedures, and the addition of an indicator to the data system showing which providers administer medications. DFPS indicates the bill would be implemented within existing resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 530 Family and Protective Services, Department of

LBB Staff: JOB, NB, CL, MB, VJC

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 10, 2011

TO: Honorable Jane Nelson, Chair, Senate Committee on Health & Human Services

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB1615 by Brown (Relating to the administering of medications to children in certain facilities; providing criminal penalties.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend the Human Resources Code, Chapter 42, by adding Section 42.065, relating to administering medication by daycare providers, including licensed centers and licensed, registered, or foster homes. The statute defines medication and provides requirements for the distribution of a medication to a child by certain facilities. The statute would also create an offense if a person administers a medication to a child in violation of this section, which would be a Class A misdemeanor. If conduct constituting an offense under this section also constitutes an offense under a section of the Penal Code, the actor may be prosecuted under either section or both sections.

The Department of Family and Protective Services (DFPS) states that implementation of the bill would require amendments to rules, the creation of policies and procedures, and the addition of an indicator to the data system showing which providers administer medications. DFPS indicates the bill would be implemented within existing resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 530 Family and Protective Services, Department of

LBB Staff: JOB, CL, MB, NB, VJC

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

April 11, 2011

TO: Honorable Richard Pena Raymond, Chair, House Committee on Human Services

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB1615 by Brown (Relating to the administering of medications to children in certain facilities; providing criminal penalties.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Human Resources Code, Chapter 42, by adding Section 42.065, relating to administering medication by daycare providers, including licensed centers and licensed, registered, or listed homes. The statute defines medication and provides requirements for the distribution of a medication to a child by certain facilities. The statute would also create an offense if a person administers a medication to a child in violation of this section, which would be a Class A misdemeanor.

The Department of Family and Protective Services (DFPS) states that implementation of the bill would require amendments to rules, the creation of policies and procedures, and the addition of an indicator to the data system showing which providers administer medications. DFPS indicates the bill would be implemented within existing resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 530 Family and Protective Services, Department of

LBB Staff: JOB, CL, MB, NB, VJC

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

April 4, 2011

TO: Honorable Richard Pena Raymond, Chair, House Committee on Human Services

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB1615 by Brown (Relating to the administering of medications to children in certain facilities; providing criminal penalties.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Human Resources Code, Chapter 42, by adding Section 42.065, relating to administering medication by daycare providers, including licensed centers and licensed, registered, or listed homes. The statute would lay out requirements for the distribution of a medication to a child. The statute would also create an offense if a person administers a medication to a child in violation of this section, which would be a Class A misdemeanor.

The Department of Family and Protective Services (DFPS) states that implementation of the bill would require amendments to rules, the creation of policies and procedures, and the addition of an indicator to the data system showing which providers administer medications. DFPS indicates the bill would be implemented within existing resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 530 Family and Protective Services, Department of

LBB Staff: JOB, CL, MB, NB, VJC

LEGISLATIVE BUDGET BOARD

Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

82ND LEGISLATIVE REGULAR SESSION

April 11, 2011

TO: Honorable Richard Pena Raymond, Chair, House Committee on Human Services

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB1615 by Brown (Relating to the administering of medications to children in certain facilities; providing criminal penalties.), **Committee Report 1st House, Substituted**

The bill would amend the Human Resources Code by adding a section relating to the administering of medications to children in certain facilities. The provisions of the bill that create new punishment or enhance existing punishment for criminal offenses are the subject of this analysis. Under the provisions of the bill, administering medication to a child in violation of the provisions of the bill would be punishable as a Class A Misdemeanor with punishment enhanced to that of a third degree felony if the child suffers serious bodily injury or death as a result of receiving the medication.

A Class A Misdemeanor is punishable by confinement in county jail for a term not to exceed one year and/or a fine not to exceed \$4,000. A felony of the third degree is punishable by confinement in prison for a term from 2 to 10 years and, in addition to confinement, an optional fine not to exceed \$10,000.

Expanding the list of behaviors for which a penalty is applied for any criminal offense is expected to result in increased demands upon the correctional resources of counties and or of the State due to longer terms of probation, or, longer terms of confinement in county jails or prison. However, in the case of this bill, it is assumed that the number of offenders convicted under this statute would not result in a significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies. It is expected that individuals who would be affected by the provision of this bill are currently being sentenced for other offenses.

Source Agencies:

LBB Staff: JOB, LM, GG

LEGISLATIVE BUDGET BOARD

Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

82ND LEGISLATIVE REGULAR SESSION

April 4, 2011

TO: Honorable Richard Pena Raymond, Chair, House Committee on Human Services

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB1615 by Brown (Relating to the administering of medications to children in certain facilities; providing criminal penalties.), **As Introduced**

The bill would amend the Human Resources Code by adding a section relating to the administering of medications to children in certain facilities. The provisions of the bill that create new punishment or enhance existing punishment for criminal offenses are the subject of this analysis. Under the provisions of the bill, administering medication to a child in violation of the provisions of the bill would be punishable as a Class A Misdemeanor with punishment enhanced to that of a third degree felony if the child suffers serious bodily injury or death as a result of receiving the medication.

A Class A Misdemeanor is punishable by confinement in county jail for a term not to exceed one year and/or a fine not to exceed \$4,000. A felony of the third degree is punishable by confinement in prison for a term from 2 to 10 years and, in addition to confinement, an optional fine not to exceed \$10,000.

Expanding the list of behaviors for which a penalty is applied for any criminal offense is expected to result in increased demands upon the correctional resources of counties and or of the State due to longer terms of probation, or, longer terms of confinement in county jails or prison. However, in the case of this bill, it is assumed that the number of offenders convicted under this statute would not result in a significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies. It is expected that individuals who would be affected by the provision of this bill are currently being sentenced for other offenses.

Source Agencies:

LBB Staff: JOB, GG, LM