

BILL ANALYSIS

Senate Research Center
86R34160 EAS-D

C.S.H.B. 4260
By: Cortez (Lucio)
Health & Human Services
5/18/2019
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

One in every 13 children has a food allergy that can cause contact with a specific food to lead to a possibly deadly reaction. Once anaphylaxis starts, the only effective treatment is the use of the drug epinephrine. Without the prompt administration of epinephrine, the chance of a fatal reaction rises. Medical procedures to treat anaphylaxis resulting from food allergies have increased by 380 percent between 2007 and 2016. Currently, public entities are not allowed to keep and administer epinephrine auto-injectors to a person who is experiencing anaphylaxis. Without allowing these public entities to keep and administer the drug, those who need an epinephrine injection will waste precious time waiting for medical treatment to arrive.

H.B. 4260 allows public entities such as childcare facilities, amusement parks, and any other entity that the executive commissioner of the Health and Human Services Commission may designate to have access to and administer epinephrine auto-injectors. H.B. 4260 is permissive in allowing entities to choose to keep an epinephrine auto-injector for use by following HHSC's policy. Additionally, the bill provides a mechanism and guidelines for the access to and use of epinephrine auto-injectors and allows pharmacists to distribute auto-injectors to these entities. (Original Author's/Sponsor's Statement of Intent)

C.S.H.B. 4260 amends current law relating to the possession and administration of an epinephrine auto-injector by certain entities.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 2 (Section 773.0145, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Section 773.014, Health and Safety Code, to read as follows:

Sec. 773.014. ADMINISTRATION OF EPINEPHRINE BY EMERGENCY MEDICAL SERVICES PERSONNEL.

SECTION 2. Amends Subchapter A, Chapter 773, Health and Safety Code, by adding Section 773.0145, as follows:

Sec. 773.0145. POSSESSION AND ADMINISTRATION OF EPINEPHRINE BY CERTAIN ENTITIES. (a) Provides that this section applies to certain enumerated entities and, subject to Subsection (b), any other entity that the executive commissioner of the Health and Human Services Commission (executive commissioner; HHSC) by rule designates as an entity that would benefit from the possession and administration of epinephrine auto-injectors.

(b) Provides that this section does not apply to a governmental entity.

(c) Authorizes an entity described by Subsection (a) to adopt a policy regarding the maintenance, administration, and disposal of epinephrine auto-injectors.

(d) Requires a policy adopted under Subsection (c) to provide that only an entity employee or volunteer who is authorized and trained may administer an epinephrine auto-injector to a person who is reasonably believed to be experiencing anaphylaxis on the premises of the entity.

(e) Requires the executive commissioner to adopt rules regarding the maintenance, administration, and disposal of an epinephrine auto-injector by an entity subject to a policy adopted under Subsection (c). Requires the rules to establish certain procedures.

(f) Requires each entity that adopts a policy under Subsection (c) to have at least one entity employee or volunteer authorized and trained to administer an epinephrine auto-injector present during all hours the entity is open to the public or to the population that the entity serves, as applicable.

(g) Requires the supply of epinephrine auto-injectors at each entity to be stored in accordance with the manufacturer's instructions in a secure location and be easily accessible to an entity employee or volunteer authorized and trained to administer an epinephrine auto-injector.

(h) Provides that each entity that adopts a policy under Subsection (c) is responsible for training the entity's employees and volunteers in the administration of an epinephrine auto-injector.

(i) Requires employee and volunteer training under this section to:

(1) include information on:

- (A) the signs and symptoms of anaphylaxis;
- (B) the recommended dosages for an adult and a child;
- (C) the administration of an epinephrine auto-injector;
- (D) the implementation of emergency procedures, if necessary, after administering an epinephrine auto-injector; and
- (E) the proper disposal of used or expired epinephrine auto-injectors; and

(2) be completed annually in a formal training session or through online education.

(j) Requires each entity to maintain records on the training completed by each employee and volunteer under this section.

(k) Authorizes a physician or person who has been delegated prescriptive authority under Chapter 157 (Authority of Physician to Delegate Certain Medical Acts), Occupations Code, to prescribe epinephrine auto-injectors in the name of an entity.

(l) Requires a physician or other person who prescribes epinephrine auto-injectors under Subsection (k) to provide the entity with a standing order for the administration of an epinephrine auto-injector to a person reasonably believed to be experiencing anaphylaxis.

(m) Provides that the standing order under Subsection (l) is not required to be patient-specific, and that the epinephrine auto-injector is authorized to be administered to a person without a previously established physician-patient relationship.

(n) Provides that, notwithstanding any other law, supervision or delegation by a physician is considered adequate if the physician:

(1) periodically reviews the order; and

(2) is available through direct telecommunication as needed for consultation, assistance, and direction.

(o) Provides that, for purposes of Subsection (n)(2), a person who has been delegated prescriptive authority under Chapter 157, Occupations Code, is not engaged in the unauthorized practice of telemedicine or acting outside the person's scope of practice by consulting a physician as provided by that subdivision when prescribing an epinephrine auto-injector in accordance with this section.

(p) Requires an order issued under this section to contain certain information.

(q) Authorizes a pharmacist to dispense an epinephrine auto-injector to an entity without requiring the name or any other identifying information relating to the user.

(r) Provides that a person who in good faith takes, or fails to take, any action under this section is immune from civil or criminal liability or disciplinary action resulting from that action or failure to act, including certain acts relating to an epinephrine auto-injector.

(s) Provides that the immunities and protections provided by this section are in addition to other immunities or limitations of liability provided by law.

(t) Provides that, notwithstanding any other law, this section does not create a civil, criminal, or administrative cause of action or liability or create a standard of care, obligation, or duty that provides a basis for a cause of action for an act or omission under this section.

(u) Provides that a cause of action does not arise from an act or omission described by this section.

(v) Provides that an entity and entity employees or volunteers are immune from suit resulting from an act, or failure to act, under this section, including an act or failure to act under related policies and procedures.

(w) Provides that an act or failure to act by entity employees or volunteers under this section, including an act or failure to act under related policies and procedures, is the exercise of judgment or discretion on the part of the entity employee or volunteer and is not considered to be a ministerial act for purposes of liability of the entity.

SECTION 3. Effective date: September 1, 2019.