By:  Klick (Senate Sponsor - Menéndez) H.B. No. 1849

(In the Senate - Received from the House April 3, 2019; April 4, 2019, read first time and referred to Committee on Health & Human Services; May 17, 2019, reported favorably by the following vote: Yeas 9, Nays 0; May 17, 2019, sent to printer.)

COMMITTEE VOTE

                 Yea Nay Absent  PNV

Kolkhorst         X

Perry             X

Buckingham        X

Campbell          X

Flores            X

Johnson           X

Miles             X

Powell            X

Seliger           X

A BILL TO BE ENTITLED

AN ACT

relating to the possession and administration of epinephrine auto-injectors in day-care centers; limiting liability.

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

SECTION 1.  Subchapter C, Chapter 42, Human Resources Code, is amended by adding Section 42.067 to read as follows:

Sec. 42.067.  EPINEPHRINE AUTO-INJECTORS; IMMUNITY FROM LIABILITY. (a) In this section:

(1)  "Anaphylaxis" means a sudden, severe, and potentially life-threatening allergic reaction that occurs when a person is exposed to an allergen.

(2)  "Epinephrine auto-injector" means a disposable medical drug delivery device that contains a premeasured single dose of epinephrine intended for use to treat anaphylaxis.

(3)  "Physician" means a person who holds a license to practice medicine in this state.

(b)  A physician, or a person who has been delegated prescriptive authority under Chapter 157, Occupations Code, may prescribe epinephrine auto-injectors in the name of a day-care center.

(c)  A physician or other person who prescribes epinephrine auto-injectors under Subsection (b) shall provide the day-care center with a standing order for the administration of an epinephrine auto-injector to a person reasonably believed to be experiencing anaphylaxis.

(d)  A standing order under Subsection (c) is not required to be patient-specific. An epinephrine auto-injector may be administered under this section to a person without a previously established physician-patient relationship.

(e)  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.

(f)  An order issued under this section must contain:

(1)  the name and signature of the prescribing physician or other person;

(2)  the name of the day-care center to which the order is issued;

(3)  the quantity of epinephrine auto-injectors to be obtained and maintained under the order; and

(4)  the date the order was issued.

(g)  A pharmacist may dispense an epinephrine auto-injector to a day-care center without requiring the name of or any other identifying information relating to the user.

(h)  A day-care center shall store an epinephrine auto-injector in a secure location that is easily accessible to employees or volunteers of the day-care center authorized and trained to administer an epinephrine auto-injector.

(i)  Each day-care center is responsible for training employees in the administration of an epinephrine auto-injector. The training must:

(1)  include information on:

(A)  recognizing the signs and symptoms of anaphylaxis;

(B)  administering an epinephrine auto-injector;

(C)  the recommended dosages for adults and children by age and weight, if applicable, and the dosages available at the center;

(D)  implementing 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)  Each day-care center shall maintain records on the training required under this section.

(k)  Not later than the 10th business day after the date a day-care center employee administers an epinephrine auto-injector in accordance with this section, the day-care center shall report the following information to the persons listed in Subsection (l):

(1)  the age of the person who received the administration of the epinephrine auto-injector;

(2)  whether the person who received the administration of the epinephrine auto-injector was:

(A)  a child enrolled in the day-care center;

(B)  a day-care center employee or volunteer; or

(C)  a visitor to the day-care center;

(3)  the physical location where the epinephrine auto-injector was administered;

(4)  the number of doses of epinephrine auto-injector administered;

(5)  the title of the employee who administered the epinephrine auto-injector; and

(6)  any other information required by the executive commissioner.

(l)  The information required by Subsection (k) shall be reported to:

(1)  the owner of the day-care center;

(2)  the physician or other person who prescribed the epinephrine auto-injector;

(3)  the commission; and

(4)  the Department of State Health Services.

(m)  The executive commissioner, in consultation with the Department of State Health Services, shall adopt rules necessary to implement this section.

(n)  A person who in good faith takes, or fails to take, action relating to the prescription of an epinephrine auto-injector to a day-care center or the administration of an epinephrine auto-injector in a day-care center is immune from civil or criminal liability or disciplinary action resulting from that action or failure to act, including:

(1)  issuing an order for epinephrine auto-injectors;

(2)  supervising or delegating the administration of an epinephrine auto-injector;

(3)  possessing, maintaining, storing, or disposing of an epinephrine auto-injector;

(4)  prescribing an epinephrine auto-injector;

(5)  dispensing an epinephrine auto-injector;

(6)  administering, or assisting in administering, an epinephrine auto-injector;

(7)  providing, or assisting in providing, training, consultation, or advice in the development, adoption, or implementation of policies, guidelines, rules, or plans; or

(8)  undertaking any other act permitted or required under this section.

(o)  The immunities and protections provided by this section are in addition to other immunities or limitations of liability provided by law.

(p)  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.

(q)  If a day-care center obtains epinephrine auto-injectors for use as authorized by this section, the day-care center shall notify each parent of a child enrolled in the center of the center's policy and procedures relating to the administration of the epinephrine auto-injectors.

(r)  An act or omission described by this section does not create a cause of action.

SECTION 2.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2019.

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