S.B. No. 869

AN ACT

relating to guidelines for policies of school districts and open-enrollment charter schools for the care of certain students at risk for anaphylaxis.

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

SECTION 1.  Section 38.0151, Education Code, is amended by amending Subsections (a), (b), and (e) and adding Subsections (g), (h), (i), and (j) to read as follows:

(a)  The board of trustees of each school district and the governing body or an appropriate officer of each open-enrollment charter school shall adopt and administer a policy for the care of students with a diagnosed food allergy at risk for anaphylaxis based on "Guidelines for the Care of Students With Food Allergies At-Risk for Anaphylaxis" [~~guidelines~~] developed by the commissioner of state health services under this section and updated by the commissioner of state health services in consultation with an ad hoc committee appointed by the commissioner of state health services as provided by Section 38.0152. The guidelines and any recommendation to update the guidelines regarding medical treatment or therapy must be scientifically valid.

(b)  A school district or open-enrollment charter school [~~that implemented a policy for the care of students with a diagnosed food allergy at risk for anaphylaxis before the development of the guidelines described by Subsection (a)~~] shall annually review [~~the policy~~] and, as necessary, revise its [~~the~~] policy for the care of students with a diagnosed food allergy at risk for anaphylaxis [~~as necessary~~] to ensure the policy is consistent with the most current version of the guidelines described by Subsection (a).

(e)  The agency shall post the guidelines described by Subsection (a) [~~developed by the commissioner of state health services under this section~~] on the agency's website with any other information relating to students with special health needs. The information posted by the agency must include a summary of the guidelines. The agency shall annually review and, as necessary, revise the summary and any other information to reflect the most current version of the guidelines.

(g)  Each school year, the board of trustees of each school district and the governing body of each open-enrollment charter school shall post a summary of the guidelines on the district's or school's Internet website, including instructions on obtaining access to the complete guidelines document. The district's or school's website must be accessible by each student enrolled in the district or school and a parent or guardian of each student. Any forms used by a district or school requesting information from a parent or guardian enrolling a child with a food allergy in the district or school must include information to access on the district's or school's Internet website a summary of the guidelines and instructions on obtaining access to the complete guidelines document.

(h)  The guidelines described by Subsection (a) may not:

(1)  require a school district or open-enrollment charter school to purchase treatments approved by the United States Food and Drug Administration or make any other expenditure that would result in a negative fiscal impact on the district or school; or

(2)  require the personnel of a district or school to administer treatments approved by the United States Food and Drug Administration to a student unless the medication is prescribed for that student by the student's physician.

(i)  This section does not:

(1)  waive any liability or immunity of a school district or open-enrollment charter school or district or school officers or employees; or

(2)  create any liability for or a cause of action against a school district or open-enrollment charter school or district or school officers or employees.

(j)  Notwithstanding any other law, this section, including any information or materials developed under this section and the dissemination of information or materials developed under 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 the basis for a cause of action.

SECTION 2.  Subchapter A, Chapter 38, Education Code, is amended by adding Section 38.0152 to read as follows:

Sec. 38.0152.  COMMITTEE TO ASSIST IN UPDATING GUIDELINES FOR CARE OF STUDENTS AT RISK FOR ANAPHYLAXIS. (a)  In this section:

(1)  "Commissioner" means the commissioner of state health services.

(2)  "Department" means the Department of State Health Services.

(3)  "Guidelines" means "Guidelines for the Care of Students With Food Allergies At-Risk for Anaphylaxis" on which school district and open-enrollment charter school policies for the care of students with a diagnosed food allergy at risk for anaphylaxis are based as provided by Section 38.0151.

(b)  The commissioner shall appoint members to an ad hoc committee to consult with the commissioner on updating the current guidelines to incorporate and specifically reference any new food-allergy management best practices and treatments, including new methods, treatments, and therapies to reduce the risk of allergic reactions.

(c)  The committee must include:

(1)  not more than one representative from:

(A)  the department; and

(B)  the Texas Nurses Association;

(2)  at least two individuals from one or more national patient advocacy organizations representing the interests of food allergies, anaphylaxis, and related medical issues, including asthma;

(3)  one principal of a public elementary school campus at which one or more students with a diagnosed food allergy at risk for anaphylaxis are enrolled;

(4)  one classroom teacher employed at a public elementary school campus at which one or more students with a diagnosed food allergy at risk for anaphylaxis are enrolled;

(5)  one superintendent of a school district;

(6)  one member of a board of trustees of a school district;

(7)  one member of a governing body of an open-enrollment charter school;

(8)  at least two parents of public school students with a diagnosed food allergy at risk for anaphylaxis;

(9)  at least four physicians board certified in allergy and immunology by the American Board of Allergy and Immunology; and

(10)  at least one physician board certified in general pediatrics by the American Board of Pediatrics who is a member of a statewide pediatric organization.

(d)  Ad hoc committee members shall serve for a period determined by the commissioner. On the resignation of a member of the committee or the removal of a member from the committee by the commissioner, the commissioner shall appoint a new member to the committee who qualifies for the committee in the same manner that the member who resigned or is removed qualified.

(e)  Section 2110.005, Government Code, does not apply to the ad hoc committee appointed under this section.

(f)  Any recommendations on updating the current guidelines regarding medical treatment or therapies must be submitted by the physicians directly to the commissioner, provided that those recommendations may only be submitted to the commissioner if approved by a majority of the physicians serving on the committee.

(g)  At least once every three years, the commissioner shall order a meeting of the committee to update the guidelines to incorporate any new food-allergy management best practices and treatments.

(h)  The commissioner may order a meeting of the committee at any time the commissioner determines necessary for the committee to:

(1)  discuss the protection of students with food allergies at risk for anaphylaxis; and

(2)  update the guidelines.

SECTION 3.  The commissioner of state health services shall:

(1)  not later than October 1, 2019, appoint the members of the ad hoc committee described by Section 38.0152, Education Code, as added by this Act, to consult with the commissioner on updating and maintaining the "Guidelines for the Care of Students With Food Allergies At-Risk for Anaphylaxis" as provided by that section; and

(2)  not later than March 1, 2020, in consultation with the ad hoc committee, update the guidelines as necessary.

SECTION 4.  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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I hereby certify that S.B. No. 869 passed the Senate on May 10, 2019, by the following vote:  Yeas 31, Nays 0.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_    Secretary of the Senate

I hereby certify that S.B. No. 869 passed the House on May 22, 2019, by the following vote:  Yeas 138, Nays 6, two present not voting.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_    Chief Clerk of the House

Approved:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_             Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_           Governor