

BILL ANALYSIS

C.S.H.B. 2411
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Public Education
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Texas' fentanyl overdose crisis is impacting Texans of all ages—and children are no exception. According to CDC, from 2019 to 2021, teen overdose deaths involving fentanyl increased by 182 percent. In these cases, children often think they're taking a drug like Adderall, without knowing that the pill is laced with fentanyl—a synthetic opioid that is 50 times more potent than heroin and 100 times more potent than morphine. Other times, children don't even know they're taking a drug and may think they're eating candy, as many fentanyl-laced pills are colorful and shaped like sweets. Some school districts across Texas are adopting policies to ensure campuses are stocked with Narcan—the lifesaving drug that can reverse an opioid overdose—and to ensure each campus has at least one school employee who is trained and authorized to administer the medication in the case of an overdose emergency. For example, after losing several students to opioid overdoses last summer, Hays CISD adopted a policy regarding the maintenance and administration of Narcan in its schools. In the past year, school officials in Hays CISD have administered Narcan on five students who overdosed during school hours, saving their lives. However many schools are still wholly unequipped to respond to an overdosing student. C.S.H.B. 2411 seeks to require every Texas school district to adopt a policy regarding the maintenance, administration, and disposal of opioid antagonists for schools serving students in grades 6 through 12 and gives private schools, charter schools, and schools not serving students in grades 6 through 12 the option to adopt such a policy.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 of this bill and jointly to the executive commissioner and the commissioner of education in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 2411 amends the Education Code to require each public school district to adopt and implement a policy regarding the maintenance, administration, and disposal of opioid antagonists at each campus in the district that serves students in grades 6 through 12 and authorizes each district to adopt and implement such a policy at each campus in the district, including campuses serving students in a grade level below grade 6. The bill authorizes an open-enrollment charter school or private school to adopt and implement such a policy, with respect to:

- campuses of the school that serve students in grades 6 through 12; or

- at each campus of the school, including campuses serving students in a grade level below grade 6.

A policy adopted by a district, charter school, or private school must:

- provide that school personnel and school volunteers who are authorized and trained may administer an opioid antagonist to a person who is reasonably believed to be experiencing an opioid-related drug overdose;
- require that each school campus subject to the policy have one or more of such school personnel members or school volunteers present during regular school hours;
- establish the number of opioid antagonists that must be available at each campus at any given time; and
- require that the supply of opioid antagonists at each school campus must be stored in a secure location and be easily accessible to such school personnel and school volunteers.

C.S.H.B. 2411 requires the executive commissioner of the Health and Human Services Commission (HHSC), in consultation with the commissioner of education, to adopt rules regarding the maintenance, administration, and disposal of opioid antagonists at a school campus with an adopted policy not later than November 1, 2023. The rules must establish the following:

- the process for checking the inventory of opioid antagonists at regular intervals for expiration and replacement; and
- the amount of training required for school personnel and school volunteers to administer an opioid antagonist.

The bill establishes that a district is not required to adopt a policy before January 1, 2024, with respect to each campus that serves students in grade 6 through 12.

C.S.H.B. 2411 requires a school, not later than the 10th business day after the date a school personnel member or school volunteer administers an opioid antagonist, to report to the district, charter holder, or governing body of the private school, as applicable; the person who prescribed the opioid antagonist; and the commissioner of state health services the following information:

- the age of the person who received the administration of the opioid antagonist;
- whether the person who received the administration of the opioid antagonist was a student, a school personnel member or school volunteer, or a visitor;
- the physical location where the opioid antagonist was administered;
- the number of doses of opioid antagonist administered;
- the title of the person who administered the opioid antagonist; and
- any other information required by the commissioner of education.

C.S.H.B. 2411 makes each district, charter school, or private school that adopts a policy under the bill's provisions responsible for training school personnel and school volunteers in the administration of an opioid antagonist and requires the training the do the following:

- include information on:
 - recognizing the signs and symptoms of an opioid-related drug overdose;
 - administering an opioid antagonist;
 - implementing emergency procedures, if necessary, after administering an opioid antagonist; and
 - properly disposing of used or expired opioid antagonists;
- be provided in a formal training session or through online education; and
- be provided in accordance with the professional development policy that each district board of trustees or governing body of a charter school must adopt annually.

The bill requires such a district, charter school, or private school to maintain records on the required training.

C.S.H.B. 2411 authorizes a physician or person who has been delegated prescriptive authority in accordance with state law to prescribe opioid antagonists in the name of a district, charter school, or private school and requires such person to provide a general standing order to the

district, charter school, or private school for the administration of the opioid antagonist. The standing order is not required to be patient-specific, and the opioid antagonist may be administered to a person without a previously established physician-patient relationship. The bill establishes that supervision or delegation by a physician is considered adequate if the physician periodically reviews the order and is available through direct telecommunication as needed. The general standing order must contain the following:

- the name and signature of the prescribing physician or other person;
- the name of the district or school to which the order is issued;
- the quantity of opioid antagonists to be obtained and maintained under the order; and
- the date of issue.

The bill authorizes a pharmacist to dispense an opioid antagonist to a district, charter school, or private school without requiring identifying information relating to the user. The bill authorizes a district or school to accept gifts, grants, donations, and federal and local funds to implement the bill.

C.S.H.B. 2411 grants a person who in good faith takes, or fails to take, any action regarding the maintenance and administration of opioid antagonists immunity from civil or criminal liability or disciplinary action resulting from that action or failure to act. The bill makes a district or school immune from suit resulting from an act, or failure to act, including:

- issuing an order for opioid antagonists;
- supervising or delegating the administration of an opioid antagonist;
- possessing, maintaining, storing, or disposing of an opioid antagonist;
- prescribing an opioid antagonist;
- dispensing an opioid antagonist;
- administering, or assisting in administering, an opioid antagonist;
- providing, or assisting in providing, training, consultation, or advice in the development, adoption, or implementation of policies, guidelines, rules, or plans; or
- undertaking any other act permitted or required under the bill's provisions.

The bill establishes that those immunities and protection are in addition to other immunities or limitations of liability provided by law. The bill establishes that a cause of action does not arise from an act or omission described by the bill. The bill expressly 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 the bill's provisions.

C.S.H.B. 2411 grants immunity to a district, charter school, or private school and school personnel and school volunteers from suit resulting from an act, or failure to act, under the bill's provisions, including an act or failure to act under related policies and procedures. The bill establishes that an act or failure to act by school personnel or a school volunteer under the bill's provisions, including an act or failure to act under related policies and procedures, is the exercise of judgment or discretion on the part of the school personnel or school volunteer and is not considered to be a ministerial act for purposes of liability of the district, charter school, or private school.

C.S.H.B. 2411 requires the commissioner of education and the executive commissioner of HHSC, not later than November 1, 2023, to jointly adopt rules necessary to implement the bill's provisions, except with respect to rules adopted by the executive commissioner regarding the maintenance, administration, and disposal of opioid antagonists at a school campus that adopts the policy.

C.S.H.B. 2411 defines "opioid antagonist" by reference as any drug that binds to opioid receptors and blocks or otherwise inhibits the effects of opioids acting on those receptors.

C.S.H.B. 2411 amends the Government Code to specify that the authorized uses of appropriated money from the opioid abatement account by an applicable state agency includes supporting

efforts to prevent or reduce deaths from opioid-related harms by a school under a policy adopted under the bill's provisions.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 2411 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Both the introduced and substitute set out provisions relating to the maintenance, administration, and disposal of opioid antagonists in public school districts, open-enrollment charter schools, and private schools. However, the introduced version does so by amending Education Code provisions relating to the maintenance and administration of epinephrine auto-injectors and asthma medicine. Accordingly, the provisions in the introduced version include opioid antagonists among the medications for which the executive commissioner of HHSC already must adopt rules on the maintenance, administration, and disposal and the rules must establish the number of medications available at each campus, the process to check inventory, and the amount of training required to administer the medication. These provisions in the introduced do not constitute an express grant of additional rulemaking authority to the executive commissioner.

However, the substitute sets out provisions relating to the maintenance, administration, and disposal of opioid antagonists in public school districts, open-enrollment charter schools, and private schools by adding provisions to the Education Code. The substitute requires the executive commissioner to adopt rules regarding maintenance, administration, and disposal of opioid antagonists and requires the rules to establish the process for checking inventory and the amount of training required to administer an opioid antagonist. These provisions in the substitute constitute an express grant of additional rulemaking authority to the executive commissioner. The substitute also includes a November 1, 2023, deadline by which the executive commissioner is required to adopt those rules.

Whereas the introduced revised the duties and composition of the stock epinephrine advisory committee to include certain duties and qualifications for members relating to opioid antagonists, the substitute does not make these revisions. The adoption of rules on the maintenance, administration, and disposal of opioid antagonists by the executive commissioner was in consultation with the commissioner of education and with advice from the advisory committee in the introduced, whereas the adoption of such rules is in consultation with the commissioner on education in the substitute.

The substitute requires the executive commissioner and the commissioner of education to jointly adopt rules necessary to implement the bill's provisions not later than November 1, 2023, except with respect to rules adopted by the executive commissioner regarding the maintenance, administration, and disposal of opioid antagonists. This requirement constitutes an express grant of additional rulemaking and does not appear in the introduced. The substitute includes a provision establishing that the bill does not require a district to comply with the requirement to adopt a policy before January 1, 2024, while the introduced makes the bill apply beginning with the 2023-2024 school year.

The substitute replaces the authorization present in the introduced for a district to adopt and implement a policy regarding the maintenance, administration, and disposal of opioid antagonists with a requirement for a district to adopt and implement such a policy with respect to each campus that serves students in grades 6 through 12.

The substitute includes a specification not in the introduced that a charter school or private school that adopts such a policy may apply the policy as follows:

- only at campuses of the school serving students in grades 6 through 12; or
- at each campus of the school, including campuses serving students in a grade level below grade 6.

The substitute does not include the following provisions, which appeared in the introduced:

- a requirement for a policy adopted by a district, charter school, or private school to provide that school personnel and school volunteers who are authorized and trained may administer an opioid antagonist to a person who is reasonably believed to be experiencing an opioid-related drug overdose on a school campus, while there is no specified location in the substitute; and
- an authorization for the policy to provide that school personnel and school volunteers who are authorized and trained to administer an opioid antagonist to a person who is reasonably believed to be experiencing an opioid-related drug overdose may do so at an off-campus school event or while in transit to or from a school event.

The substitute includes the following provision, which did not appear in the introduced:

- a requirement for the policy to require that each school campus have one or more school personnel members or school volunteers authorized and trained to administer an opioid antagonist present during regular school hours.

Whereas the introduced required the rules adopted by the executive commissioner to establish the number of opioid antagonists available at each campus, the substitute does not include this requirement. The substitute includes a requirement for the policy adopted by a district, charter school, or private school instead to establish the number of opioid antagonists that must be available at each campus at any given time.

The introduced required the supply of opioid antagonists at each campus to be stored in a secure location and easily accessible to school personnel and school volunteers authorized and trained to administer opioid antagonist, while the substitute requires the policy adopted by a district, charter school, or private school to include that requirement.

The substitute specifies that the authorized uses of appropriated money from the opioid abatement account by an applicable state agency include supporting efforts to prevent or reduce deaths from opioid-related harms by a school under the policy, whereas the introduced did not include this specification.