

BILL ANALYSIS

C.S.H.B. 4058
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Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The incidence rate of opioid overdoses has been increasing in Texas, especially on school campuses. There have been calls for the establishment of an advisory committee similar to the advisory committee that reviews the administration of epinephrine to individuals experiencing an anaphylactic reaction on school campuses. Providing for accessible opioid antagonists on school campuses and clear guidelines for administering the medicine to an individual suffering from a severe opioid-related drug overdose could help save lives. With opioid antagonist medicines such as Narcan, which are highly effective at reversing opioid overdoses when administered properly at the right time, it is now easier than ever to prevent needless overdose deaths. C.S.H.B. 4058 seeks to extend the duties of an existing advisory committee to include the oversight of opioid antagonists to individuals experiencing apparent opioid-related overdoses on the campus of a public school district, charter or private school, or institution of higher education and to require the committee to produce guidelines for storage, training, use, and disposal of opioid antagonists on these school campuses. The bill also grants immunity from civil or criminal liability to a person who in good faith takes or fails to take actions regarding opioid antagonists.

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 Texas Higher Education Coordinating Board and the commissioner of higher education in SECTION 13 of this bill.

ANALYSIS

C.S.H.B. 4058 amends the Education Code to establish provisions for the maintenance, administration, and disposal of opioid antagonists with respect to a person on an applicable campus or at or in transit to or from off-campus school events who is reasonably believed to be experiencing an apparent opioid-related drug overdose. The adoption and implementation of a policy regarding opioid antagonists is optional for public school districts, open-enrollment charter schools, private schools, and public, private, or independent institutions of higher education under the bill's provisions.

Advisory Committee

C.S.H.B. 4058 expands the scope of the advice given to the commissioner of state health services by the advisory committee originally established to advise the commissioner only on the administration of epinephrine auto-injectors and asthma medicine by requiring the committee to

also examine and review the administration of opioid antagonists to a person experiencing an apparent opioid-related drug overdose on a campus of a district, a charter school, a private school, or a public institution of higher education. The bill accordingly specifies the advisory committee's name as the stock medication advisory committee and also includes an off-campus school event or while in transit to or from a school event among the places in which the administration of opioid antagonists or epinephrine auto-injectors occurs for purposes of that requirement. Moreover, the bill does the following:

- with respect to the fields of expertise currently required of the physician appointees constituting a majority of the advisory committee members, makes a physician with expertise in the field of opioid-related drug overdose treatment, which may include a physician with expertise in the field of drug use disorders, eligible for appointment to the advisory committee; and
- requires the committee to advise the commissioner on the storage and maintenance of opioid antagonists and on a plan for the following:
 - one or more school personnel members or school volunteers trained in the administration of an opioid antagonist to be on each school campus; and
 - one or more school personnel members or school volunteers of an institution of higher education trained in the administration of an opioid antagonist on each campus of an institution.

Voluntary Adoption of Opioid Antagonists Policy by Institutions of Higher Education

Policy Requirements

C.S.H.B. 4058 authorizes each public, private, or independent institution of higher education to adopt and implement a policy providing for the availability of opioid antagonists at locations throughout the institution's campus, including provisions for the acquisition, maintenance, storage, administration, and disposal of those devices and for the training of employees and student volunteers in the proper use of those devices. The bill defines "campus" as an educational unit under the management and control of an institution of higher education or private or independent institution of higher education which may include, in addition to the main campus, off-campus and secondary locations, such as branch campuses, teaching locations, and regional centers. The bill sets out the following with respect to the policy:

- such a policy must provide that institution employees and student 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 the institution's campus;
- the Texas Higher Education Coordinating Board (THECB), with advice from the commissioner of state health services, is required to adopt rules regarding the maintenance, storage, administration, and disposal of an opioid antagonist to be used on the campus of an institution that adopts a policy that must establish the following:
 - a process for each institution to check the inventory of opioid antagonists at regular intervals for expiration and replacement; and
 - an amount of training required for employees and student volunteers to administer an opioid antagonist;
- each institution that adopts the policy must include it in the institution's student handbook or similar publication and publish the policy on the institution's website; and
- the supply of opioid antagonists at a campus must be stored in secure locations and be easily accessible to the authorized and trained employees and student volunteers.

Reporting Requirements

C.S.H.B. 4058 requires the institution of higher education, not later than the 10th business day after the date an employee or student volunteer administers an opioid antagonist in accordance with the bill's provisions regarding such policy, to report to the physician who prescribed the opioid antagonist in the name of the institution of higher education, as provided by the bill, the following information:

- the age of the person who received the administration of the opioid antagonist;
- whether the person who received the opioid antagonist was a student, employee, or 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 higher education.

Training

C.S.H.B. 4058 establishes that each institution of higher education is responsible for training employees and student volunteers in the administration of an opioid antagonist and must maintain training records. The training must be completed annually, must provide an opportunity to address frequently asked questions, and must be provided along with any other mandatory training the institution imposes, in a formal training session or through online education. Training must include information on the following:

- 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;
- the required alerting of emergency medical services during or immediately after the administration of the opioid antagonist; and
- properly disposing of used or expired opioid antagonists.

Prescriptions for Opioid Antagonists

C.S.H.B. 4058, with respect to a prescription of an opioid antagonist, provides the following:

- a physician may prescribe opioid antagonists in the name of the institution of higher education through a standing order provided to the institution for the administration of an opioid antagonist to a person reasonably believed to be experiencing an opioid-related drug overdose;
- the standing order is not required to be patient-specific and the opioid antagonist may be administered to a person without an established physician-patient relationship;
- supervision or delegation by a physician is considered adequate if the physician periodically reviews the standing order and is available through direct telecommunication as needed for consultation, assistance, and direction;
- the standing order must contain the name and signature of the prescribing physician, the name of the institution of higher education to which the order is issued, the quantity of opioid antagonists to be obtained and maintained under the order, and the date of issue; and
- a pharmacist may dispense an opioid antagonist to an institution for purposes of providing opioid antagonists without requiring the name or any other identifying information relating to the user.

Immunities

C.S.H.B. 4058 grants a person who in good faith takes, or fails to take, any action with respect to providing opioid antagonists on the campus of an institution of higher education immunity from civil or criminal liability or disciplinary action resulting from that act or failure to act, including the following:

- issuing an order for opioid antagonists;
- supervising or delegating the administration of an opioid antagonist;
- possessing, maintaining, storing, disposing of, prescribing, dispensing, or 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 regarding the availability and use of an opioid antagonist; or
- undertaking any other act permitted or required under the applicable bill provisions.

This immunity is in addition to other immunity or limitations of liability provided by law.

C.S.H.B. 4058, with respect to the institution of higher education, 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 the basis for a cause of action regarding an applicable act or omission under the bill's applicable provisions. The bill grants the institution of higher education immunity from suit resulting from an act, or failure to act, of any person, including an act or failure to act under related policies and procedures. A cause of action does not arise from an applicable act or omission described by the bill.

C.S.H.B. 4058 grants a person acting in good faith who reports or requests emergency medical assistance for a person who is reasonably believed to be experiencing an opioid-related drug overdose on campus immunity from civil liability and criminal liability for certain specified offenses under the Texas Controlled Substances Act, the Texas Dangerous Drug Act, and provisions regarding abusable volatile chemicals that might otherwise be incurred or imposed as a result of those actions. Such a person may not be subjected to any disciplinary action by the institution of higher education at which the person is enrolled or employed for any violation by the person of the institution's code of conduct reasonably related to the incident unless suspension or expulsion from the institution is a possible punishment.

Gifts, Grants, Donations, and Federal Funds; Rules

C.S.H.B. 4058 authorizes a public, private, or independent institution of higher education to accept gifts, grants, donations, and federal funds to implement the bill's provisions. The bill requires the commissioner of higher education to adopt rules necessary to implement this subchapter.

Voluntary Adoption of Opioid Antagonists Policy by District, Charter School, or Private School

Authorization; Expanded Rulemaking Authority

C.S.H.B. 4058 authorizes each school district, open-enrollment charter school, and private school to adopt and implement a policy regarding the maintenance, administration, and disposal of opioid antagonists at each campus in the district or charter school. The bill, accordingly, expands the scope of the rulemaking authority granted to the executive commissioner of the Health and Human Services Commission (HHSC) for the authorized maintenance, administration, and disposal of an epinephrine auto-injector to include the maintenance, administration, and disposal of an opioid antagonist. Those rules must establish the following:

- the number of opioid antagonists available at each campus;
- the process for each school district, open-enrollment charter school, and private school to check 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 epinephrine auto-injector or opioid antagonist.

Policy Requirements and Authorizations

C.S.H.B. 4058 establishes policy requirements and authorizations for a district or school that chooses to adopt a policy for the maintenance, administration, and disposal of opioid antagonists at each campus in the district or school. Accordingly, the bill provides the following:

- a policy 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 on a school campus; and
- a policy may provide that such personnel and volunteers may administer an opioid antagonist to such a person at an off-campus school event or while in transit to or from a school event.

Furthermore, the supply of opioid antagonists at each campus must be stored in a secure location and be easily accessible to such school personnel and volunteers.

Reporting Requirements

C.S.H.B. 4058 establishes reporting requirements for a school regarding administration of an opioid antagonist under the bill's provisions. Not later than the 10th business day after the date a school personnel member or school volunteer administers an opioid antagonist in accordance with the adopted policy, the school must report the following information to the school district, the charter holder if the school is an open-enrollment charter school, the governing body of the school if the school is a private school, the physician or other person who prescribed the opioid antagonist in the name of the district or school, and the commissioner of state health services:

- 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.

Training

C.S.H.B. 4058 makes each school district, open-enrollment school, and 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. The training must, as follows:

- 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 adopted by a school district or open-enrollment charter school.

Prescriptions

C.S.H.B. 4058 authorizes a physician or person who has been delegated prescriptive authority by a physician to prescribe opioid antagonists in the name of a school district, open-enrollment charter school, or private school and requires the physician or person to provide a standing order for the administration of the opioid antagonist to a person reasonably believed to be experiencing an opioid-related drug overdose. The standing order is expressly not required to be patient-specific and the opioid antagonist may be administered to a person without a previously established physician-patient relationship. The order must contain the following:

- the name and signature of the prescribing physician or other person;
- the name of the school district, open-enrollment charter school, or private school to which the order is issued;
- the quantity of epinephrine auto-injectors to be obtained and maintained under the order; and

- the date of issue.

Furthermore, a pharmacist may dispense an opioid antagonist to a school district, open-enrollment charter school, or private school without requiring the name or any other identifying information relating to the user.

Immunities

C.S.H.B. 4058 grants immunity from civil or criminal liability or disciplinary action resulting from an applicable person's actions, or failure to take action, to a person who in good faith takes, or fails to take, any action with respect to an opioid antagonist under the bill's provisions regarding a district, open-enrollment charter school, or private school, including the following actions:

- 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 or 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 applicable policies, guidelines, rules, or plans; or
- undertaking any other act permitted or required under the applicable bill provisions regarding the maintenance and administration of opioid antagonists by a district, open-enrollment charter school, or private school.

Definitions; Applicability

C.S.H.B. 4058 defines the following by reference for purposes of its provisions applicable to the use of opioid antagonists on the respective campuses and at or in transit to events, as applicable:

- "opioid antagonist" means any drug that binds to opioid receptors and blocks or otherwise inhibits the effects of opioids acting on those receptors; and
- "opioid-related drug overdose" means a condition, evidenced by symptoms such as extreme physical illness, decreased level of consciousness, constriction of the pupils, respiratory depression, or coma, that a layperson would reasonably believe to be the result of the consumption or use of an opioid.

C.S.H.B. 4058 applies beginning with the 2023-2024 school year or academic year, as applicable.

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. 4058 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.

While both the introduced and the substitute expand the scope of the advisory committee's advice and duties to examine and review the administration of certain medication on educational campuses, the substitute includes an off-campus school event or while in transit to or from a school event among the places in which the administration of opioid antagonists or epinephrine auto-injectors occurs for purposes of those duties, whereas the introduced did not. Additionally, the substitute includes a specification absent from the introduced that the committee is named the stock medication advisory committee.

The substitute omits the requirement present in the introduced for each public school district, open-enrollment charter school, or private school that adopts a policy regarding the maintenance, administration, and disposal of opioid antagonists to require that each campus have one or more school personnel members or school volunteers authorized and trained to administer an epinephrine auto-injector or an opioid antagonist, as applicable, present during all hours the campus is open.

The substitute changes the requirement in the introduced for public, private, and independent institutions of higher education to adopt and implement a policy regarding opioid antagonists to an authorization for those institutions to do so and changes from the commissioner of the THECB, as in the introduced, to the THECB, the entity required to adopt rules regarding the maintenance, storage, administration, and disposal of an opioid antagonist to be used on the campus of an institution subject to such a policy.