By:  Johnson, Menéndez S.B. No. 294

(In the Senate - Filed December 16, 2022; February 15, 2023, read first time and referred to Committee on Education; April 3, 2023, reported adversely, with favorable Committee Substitute by the following vote: Yeas 12, Nays 0; April 3, 2023, sent to printer.)

COMMITTEE VOTE

                    Yea Nay Absent  PNV

Creighton         X

Campbell             X

Bettencourt          X

Birdwell                       X

Flores               X

King                 X

LaMantia             X

Menéndez             X

Middleton            X

Parker               X

Paxton               X

Springer             X

West                 X

COMMITTEE SUBSTITUTE FOR S.B. No. 294 By:  Menéndez

A BILL TO BE ENTITLED

AN ACT

relating to the use of epinephrine auto-injectors and medication designated for treatment of respiratory distress on public and private school campuses.

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

SECTION 1.  The heading to Subchapter E, Chapter 38, Education Code, is amended to read as follows:

SUBCHAPTER E. MAINTENANCE AND ADMINISTRATION OF EPINEPHRINE AUTO-INJECTORS AND MEDICATION FOR RESPIRATORY DISTRESS [~~ASTHMA MEDICINE~~]

SECTION 2.  Section 38.201, Education Code, is amended by adding Subdivision (3-a) to read as follows:

(3-a) "Medication for respiratory distress" means albuterol, levalbuterol, or another medication designated by the executive commissioner of the Health and Human Services Commission for treatment of respiratory distress under Section 38.208(c).

SECTION 3.  Section 38.202(a), Education Code, is amended to read as follows:

(a)  The commissioner of state health services shall establish an advisory committee to examine and review the administration, on a campus of a school district, an open-enrollment charter school, a private school, or an institution of higher education, of:

(1)  epinephrine auto-injectors to a person experiencing an anaphylactic reaction; and

(2)  medication for respiratory distress to a person experiencing respiratory distress [~~on a campus of a school district, an open-enrollment charter school, a private school, or an institution of higher education~~].

SECTION 4.  Section 38.207, Education Code, is amended to read as follows:

Sec. 38.207.  ADVISORY COMMITTEE: DUTIES. The advisory committee shall advise the commissioner of state health services on:

(1)  the storage and maintenance of epinephrine auto-injectors and medication for respiratory distress on school campuses and campuses of institutions of higher education;

(2)  the training of school personnel and school volunteers, and of personnel and volunteers at institutions of higher education, in the administration of an epinephrine auto-injector;

(3) the training of school personnel and school volunteers, and of personnel and volunteers at institutions of higher education, in the administration of a medication for respiratory distress; and

(4) [~~(3)~~]  a plan for:

(A)  one or more school personnel members or school volunteers trained in the administration of an epinephrine auto-injector to be on each school campus; [~~and~~]

(B)  one or more school personnel members or school volunteers trained in the administration of medication for respiratory distress to be on each school campus;

(C)  one or more personnel members or volunteers of an institution of higher education trained in the administration of an epinephrine auto-injector to be on each campus of an institution of higher education; and

(D)  one or more personnel members or volunteers of an institution of higher education trained in the administration of medication for respiratory distress to be on each campus of an institution of higher education.

SECTION 5.  The heading to Section 38.208, Education Code, is amended to read as follows:

Sec. 38.208.  MAINTENANCE AND ADMINISTRATION OF EPINEPHRINE AUTO-INJECTORS AND MEDICATION FOR RESPIRATORY DISTRESS [~~ASTHMA MEDICINE~~].

SECTION 6.  Section 38.208, Education Code, is amended by amending Subsections (a-1), (b-1), (c), (e), and (f) and adding Subsections (b-2), (b-3), (d-1), (d-2), and (e-1) to read as follows:

(a-1)  Each school district, open-enrollment charter school, and private school may adopt and implement a policy regarding the maintenance, administration, and disposal of medication for respiratory distress [~~authorizing a school nurse to maintain and administer asthma medicine~~] at each campus in the district or school.

(b-1)  If a policy is adopted under Subsection (a-1), the policy must provide that school personnel and school volunteers who are authorized and trained [~~the school nurse~~] may administer medication for respiratory distress [~~prescription asthma medicine~~] to a person reasonably believed to be experiencing respiratory distress on [~~student only if the school nurse has written notification from a parent or guardian of the student that the student has been diagnosed as having asthma and stating that the school nurse may administer prescription asthma medicine to the student. A school nurse may administer the prescription asthma medicine only at~~] a school campus, or at a school-sponsored or school-related activity on or off school property.

(b-2)  If medication for respiratory distress is administered to a student whose parent or guardian has not provided notification to the school that the student has been diagnosed with asthma, the school must refer the student to the student's primary care provider on the day the medication for respiratory distress is administered and inform the student's parent or guardian regarding the referral. The referral must include:

(1)  the symptoms of respiratory distress observed;

(2)  the name of the medication for respiratory distress administered to the student; and

(3)  any patient care instructions given to the student.

(b-3)  If a student who has received medication for respiratory distress does not have a primary care provider or the parent or guardian of the student has not engaged a primary care provider for the student, the student's parent or guardian must receive information to assist the parent or guardian in selecting a primary care provider for the student.

(c)  The executive commissioner of the Health and Human Services Commission, in consultation with the commissioner of education, and with advice from the advisory committee as appropriate, shall adopt rules regarding the maintenance, administration, and disposal of an epinephrine auto-injector at a school campus subject to a policy adopted under Subsection (a) and the maintenance, [~~and~~] administration, and disposal of medication for respiratory distress [~~asthma medicine~~] at a school campus subject to a policy adopted under Subsection (a-1). The rules must establish:

(1)  the number of epinephrine auto-injectors available at each campus;

(2)  the amount of medication for respiratory distress [~~prescription asthma medicine~~] available at each campus;

(3)  the process for each school district, open-enrollment charter school, and private school to check the inventory of epinephrine auto-injectors and medication for respiratory distress [~~asthma medicine~~] at regular intervals for expiration and replacement; [~~and~~]

(4)  the amount of training required for school personnel and school volunteers to administer:

(A)  an epinephrine auto-injector; or

(B)  medication for respiratory distress; and

(5)  the types of medication that may be administered under Subsection (b-1) to persons experiencing respiratory distress, based on a review of the best available medical evidence.

(d-1)  Each school district, open-enrollment charter school, and private school that adopts a policy under Subsection (a-1) must require that each campus have one or more school personnel or school volunteers authorized and trained to administer medication for respiratory distress present during regular school hours.

(d-2)  A school personnel member or school volunteer may not be subject to any penalty or disciplinary action for refusing to administer or receive training to administer epinephrine auto-injectors or medication for respiratory distress, as applicable, in accordance with a policy adopted under Subsection (a) or (a-1).

(e)  The supply of epinephrine auto-injectors at each campus must be stored in a secure location and be easily accessible to school personnel and school volunteers authorized and trained to administer an epinephrine auto-injector. [~~The supply of asthma medicine at each campus must be stored in a secure location and be easily accessible to the school nurse.~~]

(e-1)  The supply of medication for respiratory distress at each campus must be stored in a secure location and be easily accessible to authorized school personnel and school volunteers.

(f)  The policy described by Subsection (a-1) may not require a school district, open-enrollment charter school, or private school to purchase medication for respiratory distress [~~prescription asthma medicine~~] or require any other expenditure related to the maintenance or administration of medication for respiratory distress [~~asthma medicine~~] that would result in a negative fiscal impact on the district or school.

SECTION 7.  Subchapter E, Chapter 38, Education Code, is amended by adding Section 38.2091 to read as follows:

Sec. 38.2091.  REPORT ON ADMINISTERING MEDICATION FOR RESPIRATORY DISTRESS. (a) Not later than the 10th business day after the date a school personnel member or school volunteer administers medication for respiratory distress to a person experiencing respiratory distress in accordance with a policy adopted under Section 38.208(a-1), the school shall report the information required under Subsection (b) to:

(1)  the school district, the charter holder if the school is an open-enrollment charter school, or the governing body of the school if the school is a private school;

(2)  the physician or other person who prescribed the medication for respiratory distress; and

(3)  the commissioner of state health services.

(b)  The report required under this section must include:

(1)  the age of the person who received the administration of the medication for respiratory distress;

(2)  whether the person who received the administration of the medication for respiratory distress was a student, a school personnel member or school volunteer, or a visitor;

(3)  the dosage of the medication for respiratory distress administered;

(4)  the title of the person who administered the medication for respiratory distress; and

(5)  any other information required by the commissioner of education.

SECTION 8.  Section 38.210, Education Code, is amended by amending Subsections (a) and (b) and adding Subsection (a-1) to read as follows:

(a)  Each school district, open-enrollment charter school, and private school that adopts a policy under Section 38.208(a) is responsible for training school personnel and school volunteers in the administration of an epinephrine auto-injector. The training must include information on:

(1)  recognizing the signs and symptoms of anaphylaxis;

(2)  administering an epinephrine auto-injector;

(3)  implementing emergency procedures, if necessary, after administering an epinephrine auto-injector; and

(4)  properly disposing of used or expired epinephrine auto-injectors.

(a-1)  Each school district, open-enrollment charter school, and private school that adopts a policy under Section 38.208(a-1) is responsible for training school personnel and school volunteers in the administration of medication for respiratory distress. The training must include information on:

(1)  recognizing the signs and symptoms of respiratory distress;

(2)  administering medication for respiratory distress;

(3)  implementing emergency procedures, if necessary, after administering medication for respiratory distress; and

(4)  proper sanitization, reuse, and disposal of medication for respiratory distress.

(b)  Training required under this section must be provided:

(1)  [~~include information on:~~

[~~(A)  recognizing the signs and symptoms of anaphylaxis;~~

[~~(B)  administering an epinephrine auto-injector;~~

[~~(C)  implementing emergency procedures, if necessary, after administering an epinephrine auto-injector; and~~

[~~(D)  properly disposing of used or expired epinephrine auto-injectors;~~

[~~(2) be provided~~] in a formal training session or through online education; and

(2)  [~~(3) be provided~~] in accordance with the policy adopted under Section 21.4515.

SECTION 9.  The heading to Section 38.211, Education Code, is amended to read as follows:

Sec. 38.211.  PRESCRIPTION OF EPINEPHRINE AUTO-INJECTORS AND MEDICATION FOR RESPIRATORY DISTRESS [~~ASTHMA MEDICINE~~].

SECTION 10.  Sections 38.211(a), (b), (c), (e), and (f), Education Code, are amended to read as follows:

(a)  A physician or person who has been delegated prescriptive authority under Chapter 157, Occupations Code, may prescribe epinephrine auto-injectors or medication for respiratory distress [~~asthma medicine~~] in the name of a school district, open-enrollment charter school, or private school.

(b)  A physician or other person who prescribes epinephrine auto-injectors or medication for respiratory distress [~~asthma medicine~~] under Subsection (a) shall provide the school district, open-enrollment charter school, or private school with a standing order for the administration of, as applicable:

(1)  an epinephrine auto-injector to a person reasonably believed to be experiencing anaphylaxis; or

(2)  medication for respiratory distress [~~asthma medicine~~] to a person reasonably believed to be experiencing respiratory distress [~~a symptom of asthma and who has provided written notification and permission as required by Section 38.208(b-1)~~].

(c)  The standing order under Subsection (b) is not required to be patient-specific, and the epinephrine auto-injector or medication for respiratory distress [~~asthma medicine~~] may be administered to a person without a previously established physician-patient relationship.

(e)  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 school district, open-enrollment charter school, or private school to which the order is issued;

(3)  as applicable, the quantity of epinephrine auto-injectors or the quantity and types of medications for respiratory distress [~~asthma medicine~~] to be obtained and maintained under the order; and

(4)  the date of issue.

(f)  A pharmacist may dispense an epinephrine auto-injector or medication for respiratory distress [~~asthma medicine~~] to a school district, open-enrollment charter school, or private school without requiring the name or any other identifying information relating to the user.

SECTION 11.  Section 38.212, Education Code, is amended to read as follows:

Sec. 38.212.  NOTICE TO PARENTS; WRITTEN CONSENT. (a) If a school district, open-enrollment charter school, or private school implements a policy under this subchapter, the district or school shall:

(1)  provide written notice of the policy to a parent or guardian of each student enrolled in the district or school; and

(2)  obtain written consent from a parent or guardian of each student on the student's enrollment in the district or school to administer an epinephrine auto-injector or medication for respiratory distress, as applicable, to the student in accordance with the policy.

(b)  Notice required under Subsection (a)(1) [~~this section~~] must be provided before a policy is implemented by the district or school under this subchapter and before the start of each school year.

(c)  Subsection (a)(2) does not prohibit a school personnel member or school volunteer from administering in good faith an epinephrine auto-injector to a student reasonably believed to be experiencing anaphylaxis or medication for respiratory distress to a student reasonably believed to be experiencing respiratory distress, as applicable, in accordance with a policy implemented under this subchapter, regardless of whether the student's parent or guardian has provided written consent under Subsection (a)(2).

SECTION 12.  Section 38.215(a), Education Code, is amended to read as follows:

(a)  A person who in good faith takes, or fails to take, any action under this subchapter 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 or medication for respiratory distress [~~asthma medicine~~];

(2)  supervising or delegating the administration of an epinephrine auto-injector or medication for respiratory distress [~~asthma medicine~~];

(3)  possessing, maintaining, storing, or disposing of an epinephrine auto-injector or medication for respiratory distress [~~asthma medicine~~];

(4)  prescribing an epinephrine auto-injector or medication for respiratory distress [~~asthma medicine~~];

(5)  dispensing:

(A)  an epinephrine auto-injector; or

(B)  medication for respiratory distress [~~asthma medicine, provided that permission has been granted as provided by Section 38.208(b-1)~~];

(6)  administering, or assisting in administering, an epinephrine auto-injector or medication for respiratory distress [~~asthma medicine, provided that permission has been granted as provided by Section 38.208(b-1)~~];

(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 subchapter.

SECTION 13.  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, 2023.

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