

STUDENT ASTHMA RELIEF AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mark A. Wheatley

Senate Sponsor: Ronald Winterton

LONG TITLE

General Description:

This bill enacts provisions governing the administration of stock albuterol by certain entities to an individual.

Highlighted Provisions:

This bill:

- ▶ enacts definitions;
- ▶ permits a school to make stock albuterol available to certain employees for administering to certain students;
- ▶ enacts provisions governing training provided by the Department of Health on the use and storage of stock albuterol;
- ▶ authorizes a qualified adult to obtain a prescription for stock albuterol and administer stock albuterol to certain individuals;
- ▶ enacts immunity provisions for a qualified stock albuterol entity;
- ▶ requires the Department of Health to adopt rules establishing the storage of stock albuterol by a qualified stock albuterol entity; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **26-41-101**, as enacted by Laws of Utah 1998, Chapter 17

31 **26-41-102**, as last amended by Laws of Utah 2017, Chapter 106

32 **26-41-103**, as last amended by Laws of Utah 2015, Chapter 332

33 **26-41-104**, as last amended by Laws of Utah 2015, Chapter 332

34 **26-41-105**, as last amended by Laws of Utah 2015, Chapter 332

35 **26-41-106**, as last amended by Laws of Utah 2018, Chapter 415

36 **26-41-107**, as enacted by Laws of Utah 2015, Chapter 332

37 ENACTS:

38 **26-41-104.1**, Utah Code Annotated 1953

39 REPEALS:

40 **53G-9-503**, as renumbered and amended by Laws of Utah 2018, Chapter 3



42 *Be it enacted by the Legislature of the state of Utah:*

43 Section 1. Section **26-41-101** is amended to read:

44 **CHAPTER 41. EMERGENCY RESPONSE FOR LIFE-THREATENING**
45 **CONDITIONS**

46 **26-41-101. Title.**

47 This chapter is known as [~~the "Emergency Injection for Anaphylactic Reaction Act."~~]
48 "Emergency Response for Life-threatening Conditions."

49 Section 2. Section **26-41-102** is amended to read:

50 **26-41-102. Definitions.**

51 As used in this chapter:

52 (1) "Anaphylaxis" means a potentially life-threatening hypersensitivity to a substance.

53 (a) Symptoms of anaphylaxis may include shortness of breath, wheezing, difficulty
54 breathing, difficulty talking or swallowing, hives, itching, swelling, shock, or asthma.

55 (b) Causes of anaphylaxis may include insect sting, food allergy, drug reaction, and
56 exercise.

57 (2) "Asthma action plan" means a written plan:

58 (a) developed with a school nurse, a student's parent or guardian, and the student's

59 health care provider to help control the student's asthma; and

60 (b) signed by the student's:

61 (i) parent or guardian; and

62 (ii) health care provider.

63 (3) "Asthma emergency" means an episode of respiratory distress that may include
 64 symptoms such as wheezing, shortness of breath, coughing, chest tightness, or breathing
 65 difficulty.

66 ~~[(2)]~~ (4) "Epinephrine auto-injector" means a portable, disposable drug delivery device
 67 that contains a measured, single dose of epinephrine that is used to treat a person suffering a
 68 potentially fatal anaphylactic reaction.

68a ~~H→~~ **(5) "Health care provider" means an individual who is licensed as:**

68b **(a) a physician under Title 58, Chapter 67, Utah Medical Practice Act;**

68c **(b) a physician under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;**

68d **(c) an advanced practice registered nurse under Section 58-31b-302; or**

68e **(d) a physician assistant under Title 58, Chapter 70a, Physician Assistant Act.** ←H

69 ~~[(3)]~~ ~~H→~~ ~~[(5)]~~ (6) ←H "Qualified adult" means a person who:

70 (a) is 18 years of age or older; and

71 (b) (i) for purposes of administering an epinephrine auto-injector, has successfully
 72 completed the training program established in Section 26-41-104[-]; and

73 (ii) for purposes of administering stock albuterol, has successfully completed the
 74 training program established in Section 26-41-104.1.

75 ~~[(4)]~~ ~~H→~~ ~~[(6)]~~ (7) ←H "Qualified epinephrine auto-injector entity":

76 (a) means a facility or organization that employs, contracts with, or has a similar
 77 relationship with a qualified adult who is likely to have contact with another person who may
 78 experience anaphylaxis; and

79 (b) includes:

80 (i) recreation camps;

81 (ii) an education facility, school, or university;

82 (iii) a day care facility;

83 (iv) youth sports leagues;

84 (v) amusement parks;

85 (vi) food establishments;

86 (vii) places of employment; and

87 (viii) recreation areas.

88 ~~H→~~ ~~[(7)]~~ (8) ←H "Qualified stock albuterol entity" means a public or private school that
 88a employs,

89 contracts with, or has a similar relationship with a qualified adult who is likely to have contact

90 with another person who may experience an asthma emergency.

91 ~~H~~→ ~~(8)~~ (9) ←~~H~~ "Stock albuterol" means a prescription inhaled medication:

92 (a) used to treat asthma; and

93 (b) that may be delivered through a device, including:

94 (i) an inhaler; or

95 (ii) a nebulizer with a mouthpiece or mask.

96 Section 3. Section **26-41-103** is amended to read:

97 **26-41-103. Voluntary participation.**

98 (1) This chapter does not create a duty or standard of care for:

99 (a) a person to be trained in the use and storage of epinephrine auto-injectors or stock
100 albuterol; or

101 (b) except as provided in Subsection (5), a qualified epinephrine auto-injector entity to
102 store epinephrine auto-injectors or a qualified stock albuterol entity to store stock albuterol on
103 its premises.

104 (2) Except as provided in Subsections (3) and (5), a decision by a person to
105 successfully complete a training program under Section 26-41-104 or 26-41-104.1 and to make
106 emergency epinephrine auto-injectors or stock albuterol available under the provisions of this
107 chapter is voluntary.

108 (3) A school, school board, or school official may not prohibit or dissuade a teacher or
109 other school employee at a primary or secondary school in the state, either public or private,
110 from:

111 (a) completing a training program under Section 26-41-104 or 26-41-104.1;

112 (b) possessing or storing an epinephrine auto-injector or stock albuterol on school
113 property if:

114 (i) the teacher or school employee is a qualified adult; and

115 (ii) the possession and storage is in accordance with the training received under Section
116 26-41-104 or 26-41-104.1; or

117 (c) administering an epinephrine auto-injector or stock albuterol to any person, if:

118 (i) the teacher or school employee is a qualified adult; and

119 (ii) the administration is in accordance with the training received under Section
120 26-41-104 or 26-41-104.1.

121 (4) A school, school board, or school official may encourage a teacher or other school
122 employee to volunteer to become a qualified adult.

123 (5) (a) Each primary or secondary school in the state, both public and private, shall
124 make an emergency epinephrine auto-injector available to any teacher or other school
125 employee who:

126 (i) is employed at the school; and

127 (ii) is a qualified adult.

128 (b) This section does not require a school described in Subsection (5)(a) to keep more
129 than one emergency epinephrine auto-injector on the school premises, so long as it may be
130 quickly accessed by a teacher or other school employee, who is a qualified adult, in the event of
131 an emergency.

132 (6) (a) Each primary or secondary school in the state, both public and private, may
133 make stock albuterol available to any school employee who:

134 (i) is employed at the school; and

135 (ii) is a qualified adult.

136 (b) A qualified adult may administer stock albuterol to a student who:

137 (i) has a diagnosis of asthma by a health care provider;

138 (ii) has a current asthma action plan on file with the school; and

139 (iii) is showing symptoms of an asthma emergency as described in the student's asthma
140 action plan.

141 (c) This Subsection (6) may not be interpreted to relieve a student's parent or guardian
142 of providing a student's medication or create an expectation that a school will have stock
143 albuterol available.

144 [~~6~~] (7) No school, school board, or school official shall retaliate or otherwise take
145 adverse action against a teacher or other school employee for:

146 (a) volunteering under Subsection (2);

147 (b) engaging in conduct described in Subsection (3); or

148 (c) failing or refusing to become a qualified adult.

149 Section 4. Section **26-41-104** is amended to read:

150 **26-41-104. Training in use and storage of epinephrine auto-injector.**

151 (1) (a) Each primary and secondary school in the state, both public and private, shall

152 make initial and annual refresher training, regarding the storage and emergency use of an
153 epinephrine auto-injector, available to any teacher or other school employee who volunteers to
154 become a qualified adult.

155 (b) The training described in Subsection (1)(a) may be provided by the school nurse, or
156 other person qualified to provide such training, designated by the school district physician, the
157 medical director of the local health department, or the local emergency medical services
158 director.

159 (2) A person who provides training under Subsection (1) or (6) shall include in the
160 training:

161 (a) techniques for recognizing symptoms of anaphylaxis;

162 (b) standards and procedures for the storage and emergency use of epinephrine
163 auto-injectors;

164 (c) emergency follow-up procedures, including calling the emergency 911 number and
165 contacting, if possible, the student's parent and physician; and

166 (d) written materials covering the information required under this Subsection (2).

167 (3) A qualified adult shall retain for reference the written materials prepared in
168 accordance with Subsection (2)(d).

169 (4) A public school shall permit a student to possess an epinephrine auto-injector or
170 possess and self-administer an epinephrine auto-injector if:

171 (a) the student's parent or guardian signs a statement:

172 (i) authorizing the student to possess or possess and self-administer an epinephrine
173 auto-injector; and

174 (ii) acknowledging that the student is responsible for, and capable of, possessing or
175 possessing and self-administering an epinephrine auto-injector; and

176 (b) the student's health care provider provides a written statement that states that:

177 (i) it is medically appropriate for the student to possess or possess and self-administer
178 an epinephrine auto-injector; and

179 (ii) the student should be in possession of the epinephrine auto-injector at all times.

180 (5) The [~~Utah Department of Health~~] department, in cooperation with the state
181 superintendent of public instruction, shall design forms to be used by public and private
182 schools for the parental and health care providers statements described in Subsection (4).

183 (6) (a) The department:
 184 (i) shall approve educational programs conducted by other persons, to train:
 185 (A) people under Subsection (6)(b) of this section, regarding the proper use and storage
 186 of emergency epinephrine auto-injectors; and
 187 (B) a qualified epinephrine auto-injector entity regarding the proper storage and
 188 emergency use of epinephrine auto-injectors; and
 189 (ii) may, as funding is available, conduct educational programs to train people
 190 regarding the use of and storage of emergency epinephrine auto-injectors.
 191 (b) A person who volunteers to receive training as a qualified adult to administer an
 192 epinephrine auto-injector under the provisions of this Subsection (6) shall demonstrate a need
 193 for the training to the department, which may be based upon occupational, volunteer, or family
 194 circumstances, and shall include:
 195 (i) camp counselors;
 196 (ii) scout leaders;
 197 (iii) forest rangers;
 198 (iv) tour guides; and
 199 (v) other persons who have or reasonably expect to have contact with at least one other
 200 person as a result of the person's occupational or volunteer status.

201 Section 5. Section **26-41-104.1** is enacted to read:

202 **26-41-104.1. Training in use and storage of stock albuterol.**

203 (1) (a) Each primary and secondary school in the state, both public and private, shall
 204 make initial and annual refresher training regarding the storage and emergency use of stock
 205 albuterol available to a teacher or school employee who volunteers to become a qualified adult.

206 (b) The training described in Subsection (1)(a) shall be provided by the department.

207 (2) A person who provides training under Subsection (1) or (6) shall include in the
 208 training:

209 (a) techniques for recognizing symptoms of an asthma emergency;

210 (b) standards and procedures for the storage and emergency use of stock albuterol;

211 (c) emergency follow-up procedures, and contacting, if possible, the student's parent;

212 and

213 (d) written materials covering the information required under this Subsection (2).

214 (3) A qualified adult shall retain for reference the written materials prepared in
215 accordance with Subsection (2)(d).

216 (4) (a) A public or private school shall permit a student to possess and self-administer
217 asthma medication if:

218 (i) the student's parent or guardian signs a statement:

219 (A) authorizing the student to self-administer asthma medication; and

220 (B) acknowledging that the student is responsible for, and capable of,
221 self-administering the asthma medication; and

222 (ii) the student's health care provider provides a written statement that states:

223 (A) it is medically appropriate for the student to self-administer asthma medication and
224 be in possession of asthma medication at all times; and

225 (B) the name of the asthma medication prescribed or authorized for the student's use.

226 (b) Section 53G-8-205 does not apply to the possession and self-administration of
227 asthma medication in accordance with this section.

228 (5) The department, in cooperation with the state superintendent of public instruction,
229 shall design forms to be used by public and private schools for the parental and health care
230 provider statements described in Subsection (4).

231 (6) The department:

232 (a) shall approve educational programs conducted by other persons to train:

233 (i) people under Subsection (6)(b), regarding the proper use and storage of stock
234 albuterol; and

235 (ii) a qualified stock albuterol entity regarding the proper storage and emergency use of
236 stock albuterol; and

237 (b) may conduct educational programs to train people regarding the use of and storage
238 of stock albuterol.

239 Section 6. Section **26-41-105** is amended to read:

240 **26-41-105. Authority to obtain and use an epinephrine auto-injector or stock**
241 **albuterol.**

242 (1) A qualified adult who is a teacher or other school employee at a public or private
243 primary or secondary school in the state, or a school nurse, may obtain from the school district
244 physician, the medical director of the local health department, or the local emergency medical

245 services director a prescription for epinephrine auto-injectors or stock albuterol.

246 (2) A qualified adult may obtain from a physician, pharmacist, or any other person or
247 entity authorized to prescribe or dispense prescription drugs, a prescription for an epinephrine
248 auto-injector or stock albuterol.

249 (3) A qualified adult:

250 (a) may immediately administer an epinephrine auto-injector to a person exhibiting
251 potentially life-threatening symptoms of anaphylaxis when a physician is not immediately
252 available; and

253 (b) shall initiate emergency medical services or other appropriate medical follow-up in
254 accordance with the training materials retained under Section 26-41-104 after administering an
255 epinephrine auto-injector.

256 (4) If a school nurse is not immediately available, a qualified adult:

257 (a) may immediately administer stock albuterol to an individual who:

258 (i) has a diagnosis of asthma by a health care provider;

259 (ii) has a current asthma action plan on file with the school; and

260 (iii) is showing symptoms of an asthma emergency as described in the student's asthma
261 action plan; and

262 (b) shall initiate appropriate medical follow-up in accordance with the training
263 materials retained under Section 26-41-104.1 after administering stock albuterol.

264 [~~(4)~~] (5) (a) A qualified entity that complies with Subsection [~~(4)~~] (5)(b) or (c), may
265 obtain from a physician, pharmacist, or any other person [~~or entity~~] authorized to prescribe or
266 dispense prescription drugs, a prescription for a supply of epinephrine auto-injectors or stock
267 albuterol, respectively, for:

268 (i) storing:

269 (A) the epinephrine auto-injectors on the qualified epinephrine auto-injector entity's
270 premises; and

271 (B) stock albuterol on the qualified stock albuterol entity's premises; and

272 (ii) use by a qualified adult in accordance with Subsection (3) or (4).

273 (b) A qualified epinephrine auto-injector entity shall:

274 (i) designate an individual to complete an initial and annual refresher training program
275 regarding the proper storage and emergency use of an epinephrine auto-injector available to a

276 qualified adult; and

277 (ii) store epinephrine auto-injectors in accordance with the standards established by the
278 department in Section [26-41-107](#).

279 (c) A qualified stock albuterol entity shall:

280 (i) designate an individual to complete an initial and annual refresher training program
281 regarding the proper storage and emergency use of stock albuterol available to a qualified
282 adult; and

283 (ii) store stock albuterol in accordance with the standards established by the department
284 in Section [26-41-107](#).

285 Section 7. Section **26-41-106** is amended to read:

286 **26-41-106. Immunity from liability.**

287 (1) The following, if acting in good faith, are not liable in any civil or criminal action
288 for any act taken or not taken under the authority of this chapter with respect to an anaphylactic
289 reaction or asthma emergency:

290 (a) a qualified adult;

291 (b) a physician, pharmacist, or any other person or entity authorized to prescribe or
292 dispense prescription drugs;

293 (c) a person who conducts training described in Section [26-41-104](#)~~;~~ or
294 [26-41-104.1](#);

295 (d) a qualified epinephrine auto-injector entity~~[-];~~ and

296 a qualified stock albuterol entity.

297 (2) Section [53G-9-502](#) does not apply to the administration of an epinephrine
298 auto-injector or stock albuterol in accordance with this chapter.

299 (3) This section does not eliminate, limit, or reduce any other immunity from liability
300 or defense against liability that may be available under state law.

301 Section 8. Section **26-41-107** is amended to read:

302 **26-41-107. Administrative rulemaking authority.**

303 The department shall adopt rules in accordance with Title 63G, Chapter 3, Utah
304 Administrative Rulemaking Act, to:

305 (1) establish and approve training programs in accordance with ~~[Section]~~ Sections
306 [26-41-104](#) and [26-41-104.1](#);

307 (2) establish a procedure for determining who is eligible for training as a qualified
308 adult under Subsection [26-41-104\(6\)\(b\)\(v\)](#); and

309 (3) establish standards for storage of:

310 (a) emergency auto-injectors by a qualified epinephrine auto-injector entity under
311 Section [26-41-104](#)[-]; and

312 (b) stock albuterol by a qualified stock albuterol entity under Section [26-41-104.1](#).

313 Section 9. **Repealer.**

314 This bill repeals:

315 Section [53G-9-503](#), **Self-administration of asthma medication.**

316 Section 10. **Effective date.**

317 This bill takes effect July 1, 2020.