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.

Utah Code Sections Affected:
AMENDS:
Be it enacted by the Legislature of the state of Utah:

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

CHAPTER 41. EMERGENCY RESPONSE FOR LIFE-THREATENING CONDITIONS

26-41-101. Title.

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

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


As used in this chapter:

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

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

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

(2) "Asthma action plan" means a written plan:
(a) developed with a school nurse, a student's parent or guardian, and the student's health care provider to help control the student's asthma; and

(b) signed by the student's:

(i) parent or guardian; and

(ii) health care provider.

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

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

(5) "Health care provider" means an individual who is licensed as:

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

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

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

(d) a physician assistant under Title 58, Chapter 70a, Physician Assistant Act.

(6) "Qualified adult" means a person who:

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

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

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

(7) "Qualified epinephrine auto-injector entity":

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

(b) includes:

(i) recreation camps;
(ii) an education facility, school, or university;
(iii) a day care facility;
(iv) youth sports leagues;
(v) amusement parks;
(vi) food establishments;
(vii) places of employment; and
(viii) recreation areas.

(8) "Qualified stock albuterol entity" means a public or private school that employs, contracts with, or has a similar relationship with a qualified adult who is likely to have contact with another person who may experience an asthma emergency.

(9) "Stock albuterol" means a prescription inhaled medication:
(a) used to treat asthma; and
(b) that may be delivered through a device, including:
(i) an inhaler; or
(ii) a nebulizer with a mouthpiece or mask.

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

26-41-103. Voluntary participation.
(1) This chapter does not create a duty or standard of care for:
(a) a person to be trained in the use and storage of epinephrine auto-injectors or stock albuterol; or
(b) except as provided in Subsection (5), a qualified epinephrine auto-injector entity to store epinephrine auto-injectors or a qualified stock albuterol entity to store stock albuterol on its premises.
(2) Except as provided in Subsections (3) and (5), a decision by a person to successfully complete a training program under Section 26-41-104 or 26-41-104.1 and to make emergency epinephrine auto-injectors or stock albuterol available under the provisions of this chapter is voluntary.
(3) A school, school board, or school official may not prohibit or dissuade a teacher or
other school employee at a primary or secondary school in the state, either public or private,
from:
(a) completing a training program under Section 26-41-104 or 26-41-104.1;
(b) possessing or storing an epinephrine auto-injector or stock albuterol on school
property if:
(i) the teacher or school employee is a qualified adult; and
(ii) the possession and storage is in accordance with the training received under Section
26-41-104 or 26-41-104.1; or
(c) administering an epinephrine auto-injector or stock albuterol to any person, if:
(i) the teacher or school employee is a qualified adult; and
(ii) the administration is in accordance with the training received under Section
26-41-104 or 26-41-104.1.
(4) A school, school board, or school official may encourage a teacher or other school
employee to volunteer to become a qualified adult.
(5) (a) Each primary or secondary school in the state, both public and private, shall
make an emergency epinephrine auto-injector available to any teacher or other school
employee who:
(i) is employed at the school; and
(ii) is a qualified adult.
(b) This section does not require a school described in Subsection (5)(a) to keep more
than one emergency epinephrine auto-injector on the school premises, so long as it may be
quickly accessed by a teacher or other school employee, who is a qualified adult, in the event of
an emergency.
(6) (a) Each primary or secondary school in the state, both public and private, may
make stock albuterol available to any school employee who:
(i) is employed at the school; and
(ii) is a qualified adult.
(b) A qualified adult may administer stock albuterol to a student who:
(i) has a diagnosis of asthma by a health care provider;
(ii) has a current asthma action plan on file with the school; and
(iii) is showing symptoms of an asthma emergency as described in the student's asthma action plan.

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

[(6)] (7) No school, school board, or school official shall retaliate or otherwise take adverse action against a teacher or other school employee for:
(a) volunteering under Subsection (2);
(b) engaging in conduct described in Subsection (3); or
(c) failing or refusing to become a qualified adult.

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

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

(1) (a) Each primary and secondary school in the state, both public and private, shall make initial and annual refresher training, regarding the storage and emergency use of an epinephrine auto-injector, available to any teacher or other school employee who volunteers to become a qualified adult.

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

(2) A person who provides training under Subsection (1) or (6) shall include in the training:
(a) techniques for recognizing symptoms of anaphylaxis;
(b) standards and procedures for the storage and emergency use of epinephrine auto-injectors;
(c) emergency follow-up procedures, including calling the emergency 911 number and
contacting, if possible, the student's parent and physician; and

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

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

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

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

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

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

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

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

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

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

(6) (a) The department:

(i) shall approve educational programs conducted by other persons, to train:

(A) people under Subsection (6)(b) of this section, regarding the proper use and storage of emergency epinephrine auto-injectors; and

(B) a qualified epinephrine auto-injector entity regarding the proper storage and emergency use of epinephrine auto-injectors; and

(ii) may, as funding is available, conduct educational programs to train people regarding the use of and storage of emergency epinephrine auto-injectors.

(b) A person who volunteers to receive training as a qualified adult to administer an epinephrine auto-injector under the provisions of this Subsection (6) shall demonstrate a need
for the training to the department, which may be based upon occupational, volunteer, or family circumstances, and shall include:

(i) camp counselors;
(ii) scout leaders;
(iii) forest rangers;
(iv) tour guides; and
(v) other persons who have or reasonably expect to have contact with at least one other person as a result of the person's occupational or volunteer status.

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

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

(1) (a) Each primary and secondary school in the state, both public and private, shall make initial and annual refresher training regarding the storage and emergency use of stock albuterol available to a teacher or school employee who volunteers to become a qualified adult.
(b) The training described in Subsection (1)(a) shall be provided by the department.
(2) A person who provides training under Subsection (1) or (6) shall include in the training:
(a) techniques for recognizing symptoms of an asthma emergency;
(b) standards and procedures for the storage and emergency use of stock albuterol;
(c) emergency follow-up procedures, and contacting, if possible, the student's parent;
and
(d) written materials covering the information required under this Subsection (2).
(3) A qualified adult shall retain for reference the written materials prepared in accordance with Subsection (2)(d).
(4) (a) A public or private school shall permit a student to possess and self-administer asthma medication if:
(i) the student's parent or guardian signs a statement:
(A) authorizing the student to self-administer asthma medication; and
(B) acknowledging that the student is responsible for, and capable of,
self-administering the asthma medication; and
(ii) the student's health care provider provides a written statement that states:
(A) it is medically appropriate for the student to self-administer asthma medication and
be in possession of asthma medication at all times; and
(B) the name of the asthma medication prescribed or authorized for the student's use.
(b) Section 53G-8-205 does not apply to the possession and self-administration of
asthma medication in accordance with this section.
(5) The department, in cooperation with the state superintendent of public instruction,
shall design forms to be used by public and private schools for the parental and health care
provider statements described in Subsection (4).
(6) The department:
(a) shall approve educational programs conducted by other persons to train:
(i) people under Subsection (6)(b), regarding the proper use and storage of stock
albuterol; and
(ii) a qualified stock albuterol entity regarding the proper storage and emergency use of
stock albuterol; and
(b) may conduct educational programs to train people regarding the use of and storage
of stock albuterol.
Section 6. Section 26-41-105 is amended to read:
26-41-105. Authority to obtain and use an epinephrine auto-injector or stock
albuterol.
(1) A qualified adult who is a teacher or other school employee at a public or private
primary or secondary school in the state, or a school nurse, may obtain from the school district
physician, the medical director of the local health department, or the local emergency medical
services director a prescription for epinephrine auto-injectors or stock albuterol.
(2) A qualified adult may obtain from a physician, pharmacist, or any other person or
entity authorized to prescribe or dispense prescription drugs, a prescription for an epinephrine
auto-injector or stock albuterol.
(3) A qualified adult:
   (a) may immediately administer an epinephrine auto-injector to a person exhibiting potentially life-threatening symptoms of anaphylaxis when a physician is not immediately available; and
   (b) shall initiate emergency medical services or other appropriate medical follow-up in accordance with the training materials retained under Section 26-41-104 after administering an epinephrine auto-injector.

(4) If a school nurse is not immediately available, a qualified adult:
   (a) may immediately administer stock albuterol to an individual who:
      (i) has a diagnosis of asthma by a health care provider;
      (ii) has a current asthma action plan on file with the school; and
      (iii) is showing symptoms of an asthma emergency as described in the student's asthma action plan; and
   (b) shall initiate appropriate medical follow-up in accordance with the training materials retained under Section 26-41-104.1 after administering stock albuterol.

(5) (a) A qualified entity that complies with Subsection (5)(b) or (c), may obtain from a physician, pharmacist, or any other person authorized to prescribe or dispense prescription drugs, a prescription for a supply of epinephrine auto-injectors or stock albuterol, respectively, for:
   (i) storing:
      (A) the epinephrine auto-injectors on the qualified epinephrine auto-injector entity's premises; and
      (B) stock albuterol on the qualified stock albuterol entity's premises; and
   (ii) use by a qualified adult in accordance with Subsection (3) or (4).
   (b) A qualified epinephrine auto-injector entity shall:
      (i) designate an individual to complete an initial and annual refresher training program regarding the proper storage and emergency use of an epinephrine auto-injector available to a qualified adult; and
(ii) store epinephrine auto-injectors in accordance with the standards established by the department in Section 26-41-107.

(c) A qualified stock albuterol entity shall:

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

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

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

26-41-106. Immunity from liability.

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

(a) a qualified adult;

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

(c) a person who conducts training described in Section 26-41-104[; and] or

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

(e) a qualified stock albuterol entity.

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

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

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


The department shall adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:
(1) establish and approve training programs in accordance with [Section] Sections 26-41-104 and 26-41-104.1;
(2) establish a procedure for determining who is eligible for training as a qualified adult under Subsection 26-41-104(6)(b)(v); and
(3) establish standards for storage of:
   (a) emergency auto-injectors by a qualified epinephrine auto-injector entity under Section 26-41-104[ ]; and
   (b) stock albuterol by a qualified stock albuterol entity under Section 26-41-104.1.

Section 9. Repealer.
This bill repeals:
Section 53G-9-503, Self-administration of asthma medication.

Section 10. Effective date.
This bill takes effect July 1, 2020.