



Ohio Legislative Service Commission

Bill Analysis

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Am. Sub. H.B. 39 131st General Assembly (As Passed by the House)

Reps. Duffey and DeVitis, Butler, Thompson, Roegner, Dever, LaTourette, Blessing, Landis, Gonzales, Perales, Hagan, Retherford, Cera, Hill, Hall, Reece, Bishoff, Stinziano, Fedor, Huffman, Antonio, Barnes, Brown, Celebrezze, Schuring, Sprague, Lepore-Hagan, Amstutz, Anielski, Baker, Boose, Boyd, Buchy, Burkley, Conditt, Craig, Cupp, Derickson, Dovilla, Driehaus, Gerberry, Green, Grossman, Hackett, Hayes, T. Johnson, Kraus, Kunze, Leland, Maag, Manning, McClain, McColley, M. O'Brien, S. O'Brien, Patterson, Pelanda, Phillips, Ramos, Rezabek, Rogers, Ruhl, Ryan, Schaffer, Sears, Sheehy, Slaby, Slesnick, K. Smith, R. Smith, Strahorn, Sweeney, Sykes, Young

BILL SUMMARY

- Permits a school or camp to procure and possess asthma inhalers for use in emergency situations.
- Requires a school or camp that chooses to do so to adopt an inhaler policy that includes a prescriber-issued protocol.
- Allows a school district to deliver inhalers to a school under its operation.
- Grants a school or camp qualified immunity from civil liability for damages allegedly arising from the procurement, maintenance, access, or use of an inhaler.
- Permits a drug manufacturer to donate inhalers to a school and authorizes a school or camp to receive financial donations to purchase inhalers.

CONTENT AND OPERATION

Asthma background

Asthma is a chronic lung disease that inflames and narrows the airways. It causes recurring periods of wheezing, chest tightness, shortness of breath, and

coughing.¹ An individual diagnosed with asthma may need quick-relief prescription medications to treat asthmatic symptoms.

Most asthma medications are inhaled as sprays or powders and may be taken using metered dose inhalers or dry powder inhalers. A metered dose inhaler is a small, pressurized canister that releases a pre-measured dose of medication,² while a dry powder inhaler is breath-activated, releasing the medication only when a deep, fast breath is taken.³ In the case of a metered dose inhaler, a spacer or holding chamber may be attached to it to improve the delivery of asthma medication. The spacer or chamber helps to deliver more medication to the lungs by decreasing the amount that lands on the tongue or back of the throat.⁴

Procurement and possession of inhalers by a school or camp

The bill authorizes school governing authorities and certain types of camps to procure and possess inhalers for use in emergency situations in accordance with the bill.⁵ This authority extends to inhalers that are used to alleviate asthmatic symptoms, are manufactured in the form of metered dose inhalers or dry powder inhalers, and may include spacers, holding chambers, or other devices that attach to inhalers to improve the delivery of the asthma medication.⁶

In the case of schools, the bill applies to the following:

(1) Public schools, which include schools operated by school districts, community schools (often referred to as charter schools), science, technology,

¹ U.S. Department of Health and Human Services, National Institutes of Health, National Heart, Lung, and Blood Institute, *What is Asthma?* (last visited May 8, 2015), available at <<http://www.nhlbi.nih.gov/health/health-topics/topics/asthma>>.

² U.S. Department of Health and Human Services, National Institutes of Health, National Heart, Lung, and Blood Institute, *Asthma & Physical Activity in the School: Making a Difference* (last visited May 8, 2015), available at <http://www.nhlbi.nih.gov/files/docs/public/lung/phy_asth.pdf>.

³ American Academy of Allergy Asthma & Immunology, Conditions and Treatments, Conditions Dictionary, *Dry Powder Inhaler* (last visited May 8, 2015), available at <<http://www.aaaai.org/conditions-and-treatments/conditions-a-to-z-search/Dry-Powder-Inhalers.aspx>>.

⁴ U.S. Department of Health and Human Services, National Institutes of Health, National Heart, Lung, and Blood Institute, *So You Have Asthma* (last visited May 8, 2015), available at <http://www.nhlbi.nih.gov/files/docs/public/lung/SoYouHaveAsthma_PRINT-reduced-filesize.pdf>.

⁵ R.C. 3313.7113, 3313.7114, 3314.144, 3326.30, 3328.30, 4729.51, and 5101.77.

⁶ R.C. 3313.7113(A), 3313.7114(A), 3314.144(A), 3326.30(A), 3328.30(A), 4729.51, and 5101.77(A).



engineering, and math (STEM) schools, and public college-preparatory boarding schools;

(2) Chartered nonpublic schools, which are private schools that hold a charter from the State Board of Education and meet certain state requirements (and are therefore eligible to receive state funds);

(3) Nonchartered nonpublic schools, which are private schools that do not hold a charter from the State Board and do not receive state funds but still must meet minimum education standards.

In the case of camps, the bill applies to the following:

(1) Residential camps, which are programs in which the care, physical custody, or control of children is accepted overnight for recreational or for both recreational and educational purposes;

(2) Child day camps, which are programs (1) in which only school-age children attend or participate, (2) that operate for no more than seven hours per day, (3) that operate only during school vacation periods or for no more than fifteen weeks during the summer, and (4) that generally operate outdoor activities for at least 50% of each day;

(3) Child day camps operated by a county, township, municipal corporation, township park district, park district, or joint recreation district.

Policy governing inhaler maintenance and use

If a school governing authority or a camp elects to procure inhalers, the bill requires that it adopt a policy governing their maintenance and use. In the case of a public school district, the district's board of education must require the district's superintendent to adopt the policy.⁷

Before adopting the policy, the school governing authority, district superintendent, or camp must consult with a licensed health professional who is authorized to prescribe drugs (a "prescriber"). One component of an adopted policy must be a prescriber-issued protocol, specifying definitive orders for inhalers, including the dosages of medication to be administered through them, the number of times that

⁷ R.C. 3313.7113, 3313.7114, 3314.144, 3326.30, 3328.30, and 5101.77.



each inhaler may be used before disposal, and the methods of disposal. The policy also must do all of the following:⁸

- (1) Identify one or more locations in which an inhaler must be stored;
- (2) Specify the conditions under which an inhaler must be stored, replaced, and disposed;
- (3) Specify the employees or contractors who may access and use an inhaler to provide a dosage of medication to an individual in an emergency situation. Under the bill, a licensed school nurse or athletic trainer may access and use an inhaler.
- (4) Specify any training that employees or contractors, other than a school nurse or athletic trainer, must complete before being authorized to access or use an inhaler;
- (5) Identify the emergency situations, including when an individual exhibits signs and symptoms of asthma, in which an authorized employee, contractor, school nurse, or athletic trainer may access and use an inhaler;
- (6) Specify that assistance from an emergency medical service provider must be requested immediately after an employee or contractor, other than a school nurse, athletic trainer, or another licensed health professional, uses an inhaler;
- (7) Specify the individuals, in addition to students, school employees or contractors, and school visitors, to whom a dosage of medication may be administered through an inhaler in specified emergency conditions.

The bill provides that a school governing authority or camp that elects to procure inhalers is encouraged to maintain at least two inhalers at all times.⁹

Reporting of procurement and use

The bill requires a school district or school that chooses to procure inhalers as permitted by the bill to report to the Ohio Department of Education each procurement and occurrence in which an inhaler is used from a school's supply.¹⁰

⁸ R.C. 3313.7113 and 5101.77.

⁹ R.C. 3313.7113, 3313.7114, 3314.144, 3326.30, 3328.30, and 5101.77.

¹⁰ R.C. 3313.7113, 3313.7114, 3314.144, 3326.30, and 3328.30.



Similarly, the bill requires a camp that chooses to procure inhalers as permitted by the bill to report to the Ohio Department of Job and Family Services each procurement and occurrence in which an inhaler is used from a camp's supply.¹¹

Delivery of inhalers to individual schools

The bill permits the board of education of a school district to deliver inhalers to a school under its control for the purpose of possessing the inhalers for use in emergency situations in accordance with the bill.¹²

Donations from manufacturers; monetary donations

The bill permits a drug manufacturer to donate inhalers to a school district or school.¹³ The bill also expressly authorizes a school district, school, or camp to accept financial donations from any person to purchase inhalers.¹⁴

Qualified civil immunity

The bill provides that a school district, school, or camp that elects to procure inhalers, as well as the governing authority, employee, or contractor of a school district, school, or camp, is not liable for damages in a civil action for injury, death, or loss to person or property that allegedly arises from an act or omission associated with procuring, maintaining, accessing, or using an inhaler under the bill, unless the act or omission constitutes willful or wanton misconduct.

The bill also specifies that its provisions do not eliminate, limit, or reduce any other immunity or defense that such a person or entity may be entitled to under the existing Political Subdivision Sovereign Immunity (PSSI) Law (R.C. Chapter 2744.), any other provision of the Revised Code, or Ohio common law.¹⁵

Under the PSSI Law, unchanged by the bill, both of the following are the case:

--A political subdivision is generally not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a

¹¹ R.C. 5101.77.

¹² R.C. 4729.51(G).

¹³ R.C. 4729.51(A)(2).

¹⁴ R.C. 3313.7113, 3313.7114, 3314.144, 3326.30, 3328.30, and 5101.77.

¹⁵ R.C. 3313.7113, 3313.7114, 3314.144, 3326.30, 3328.30, and 5101.77.



governmental function or proprietary function. (School districts, counties, townships, municipal corporations, township park districts, parks districts, and joint recreation districts are political subdivisions. The provision of a system of public education is identified as a governmental function, and it appears that operation of a camp by a political subdivision would also be a governmental function.)¹⁶

--An employee of a political subdivision is immune from liability unless (1) the employee's acts or omissions were manifestly outside the scope of the employee's employment or official responsibilities, (2) the employee's acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner, or (3) civil liability is expressly imposed upon the employee by a section of the Revised Code.¹⁷

Sale and possession of prescription drugs in general

Ohio law permits only a registered wholesale distributor of dangerous drugs licensed by the State Board of Pharmacy to sell prescription drugs at wholesale. With respect to prescription drugs generally, the registered distributor may sell drugs at wholesale to specified persons or entities only. Such a person or entity includes the holder of a license issued by the Board. The law further provides for the sale of specific drugs at wholesale to particular entities. For example, current law permits a registered wholesale distributor to sell epinephrine autoinjectors to a school or camp. The bill extends this authority to permit the sale of inhalers by a registered wholesale distributor to a school or camp.¹⁸

Ohio law also permits only certain persons or entities to possess prescription drugs generally, including the holder of a license issued by the Board or a specified licensed health professional. Current law further permits certain persons or entities to possess particular drugs. For instance, existing law allows a school or camp to possess epinephrine autoinjectors. Under the bill, a school or camp may, in addition, possess inhalers.

Background

Administration of drugs

Current law requires each school district board of education to have a general policy on the administration of drugs that have been prescribed for its students. That policy must either (1) prohibit the district's employees from administering prescription

¹⁶ R.C. 2744.01(A)(1), (C)(2)(c), and (F), not in the bill.

¹⁷ R.C. 2744.03(A)(6), not in the bill.

¹⁸ R.C. 4729.51.



drugs or (2) authorize designated employees to do so. A district board that permits the administration of prescription drugs must adopt a policy designating the employees authorized to administer them. Those employees must be licensed health professionals or individuals who have completed a drug administration training program conducted by a licensed health professional and considered appropriate by the district board. Conversely, a district that does not permit the administration of prescription drugs must adopt a policy stating that no employee may do so, except as required by federal special education law.¹⁹

Current Ohio law does not address the administration of medication by camps; however, day camps that provide publicly funded child care must be accredited by the American Camp Association or another nationally recognized organization with substantially similar standards.²⁰ The standards for accreditation by the American Camp Association require that camps have written policies regarding medication administration.²¹

Self-administration of inhalers by students

Existing law also includes a separate provision pertaining to self-administration of inhalers by students. Under that provision, a student of a school district, community school, STEM school, or chartered nonpublic school is permitted to possess and use a metered dose or dry powder inhaler to alleviate asthmatic symptoms or before exercise to prevent the onset of symptoms, under certain conditions.²² However, possession of an inhaler is permitted only if both of the following conditions are met:

(1) The student has written approval from the student's physician and, if the student is a minor, from the student's parent, guardian, or caregiver;

(2) The school principal and school nurse, if one is assigned to the school building, have received copies of the physician's written approval.

COMMENT

The bill requires that residential (or overnight) camps report the procurement and use of inhalers to ODJFS, but residential camps, unlike day camps, are not regulated by ODJFS. Residential camps are largely unregulated in Ohio, but they are

¹⁹ R.C. 3313.713.

²⁰ O.A.C. 5101:2-18-01.

²¹ American Camp Association, *Accreditation Process Guide*, HW.19 (2012).

²² R.C. 3313.716, not in the bill.



required to meet certain health and safety requirements established by the Ohio Department of Health, including obtaining an annual permit from the local board of health.²³

HISTORY

ACTION	DATE
Introduced	02-04-15
Reported, H. Health & Aging	03-11-15
Passed House (98-0)	03-18-15

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²³ O.A.C. Chapter 3701-25.

