



Ohio Legislative Service Commission

Final Analysis

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Sub. H.B. 39

131st General Assembly
(As Passed by the General Assembly)

- 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
- Sens.** Beagle, Gardner, Jones, Lehner, Brown, Bacon, Balderson, Burke, Cafaro, Coley, Eklund, Hite, Hughes, LaRose, Manning, Obhof, Oelslager, Patton, Peterson, Schiavoni, Skindell, Thomas, Uecker, Widener, Yuko

Effective date: February 1, 2016

ACT 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.
- 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 monetary donations to purchase inhalers.

CONTENT AND OPERATION

Procurement and possession of inhalers by a school or camp

The act authorizes school governing authorities and certain types of camps to procure and possess inhalers for use in emergency situations without possessing an otherwise required license from the State Board of Pharmacy. 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.¹

In the case of schools, the act applies to:

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

(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 act applies to:

(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 (a) in which only school-age children attend or participate, (b) that operate for no more than seven hours per day, (c) that operate only during school vacation periods or for no more than 15 weeks during the summer, and (d) that generally operate outdoor activities for at least 50% of each day; and

¹ R.C. 3313.7113, 3313.7114, 3314.144, 3326.30, 3328.30, 4729.51, and 5101.77.



(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, it must adopt a policy governing their maintenance and use. In the case of a school district, the board of education must require the district's superintendent to adopt the policy.²

Before adopting the policy, the governing authority, superintendent, or camp must consult with a licensed health professional who is authorized to prescribe drugs. 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 each inhaler may be used before disposal, and the methods of disposal. The policy also must:³

- (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, in addition to licensed school nurses and athletic trainers, who may access and use an inhaler to provide a dosage of medication to an individual in an emergency situation;
- (4) Specify any training that employees or contractors, who are not school nurses or athletic trainers, 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 inhaler may be accessed and used;
- (6) Specify that assistance from an emergency medical service provider must be requested immediately after an employee or contractor, who is not a school nurse, athletic trainer, or other 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.

² R.C. 3313.7113, 3313.7114, 3314.144, 3326.30, 3328.30, and 5101.77.

³ R.C. 3313.7113 and 5101.77.



The act provides that a school governing authority or camp that elects to procure inhalers is encouraged to maintain at least two inhalers at all times.⁴

Reporting of procurement and use

The act requires a school district or school that chooses to procure inhalers to report to the Department of Education each procurement and occurrence in which an inhaler is used from a school's supply. Similarly, a camp that chooses to procure inhalers must report to the Department of Job and Family Services each procurement and occurrence in which an inhaler is used from its supply.⁵

Donations

The act permits a drug manufacturer to donate inhalers to a school district or school.⁶ It also expressly authorizes a school district, school, or camp to accept monetary donations from any person to purchase inhalers.⁷

Qualified civil immunity

The act provides that a school district, school, or camp that elects to procure inhalers, as well as the governing authority, an employee, or a 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 act, unless the act or omission constitutes willful or wanton misconduct.

The act 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 Political Subdivision Sovereign Immunity Law (R.C. Chapter 2744.), any other provision of the Revised Code, or Ohio common law.⁸

⁴ R.C. 3313.7113, 3313.7114, 3314.144, 3326.30, 3328.30, and 5101.77.

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

⁶ R.C. 4729.51(A)(2).

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

⁸ R.C. 3313.7113, 3313.7114, 3314.144, 3326.30, 3328.30, and 5101.77.



Conforming changes

Because schools and camps will not possess a license from the State Board of Pharmacy that is otherwise necessary to procure and possess prescription drugs, the act makes conforming changes to the state pharmacy law to authorize:

(1) Registered wholesale distributors of dangerous drugs licensed by the Board to sell inhalers to a school or camp;

(2) A school or camp to possess inhalers; and

(3) The board of education of a school district to deliver inhalers to a school under its control.

Similar conforming changes were included in the 2014 legislation authorizing schools and camps to procure and possess epinephrine auto-injectors.⁹

HISTORY

ACTION	DATE
Introduced	02-04-15
Reported, H. Health & Aging	03-11-15
Passed House (98-0)	03-18-15
Reported, S. Health & Human Services	09-30-15
Passed Senate (32-0)	09-30-15
House concurred in Senate amendments (98-0)	10-07-15

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⁹ R.C. 4729.51. The 2014 legislation was Sub. H.B. 296 of the 130th General Assembly.

