

Introduced by Senator HuffFebruary 27, 2015

An act to amend Section 49414 of the Education Code, relating to pupil health.

LEGISLATIVE COUNSEL'S DIGEST

SB 738, as introduced, Huff. Pupil health: epinephrine auto-injectors: liability limitation.

Existing law requires school districts, county offices of education, and charter schools to provide emergency epinephrine auto-injectors to school nurses and trained personnel who have volunteered, as specified, and authorizes school nurses and trained personnel to use epinephrine auto-injectors to provide emergency medical aid to persons suffering, or reasonably believed to be suffering, from an anaphylactic reaction. Existing law requires a qualified supervisor of health or administrator at a school district, county office of education, or charter school to obtain the prescription for epinephrine auto-injectors from an authorizing physician and surgeon, as defined, and authorizes the prescription to be filled by local or mail order pharmacies or epinephrine auto-injector manufacturers.

This bill would prohibit an authorizing physician and surgeon from being subject to professional review, being liable in a civil action, or being subject to criminal prosecution for any act in the issuing of a prescription or order, pursuant to these provisions, unless the act constitutes gross negligence or willful or malicious conduct.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 49414 of the Education Code is amended
2 to read:

3 49414. (a) School districts, county offices of education, and
4 charter schools shall provide emergency epinephrine auto-injectors
5 to school nurses or trained personnel who have volunteered
6 pursuant to subdivision (d), and school nurses or trained personnel
7 may use epinephrine auto-injectors to provide emergency medical
8 aid to persons suffering, or reasonably believed to be suffering,
9 from an anaphylactic reaction.

10 (b) For purposes of this section, the following terms have the
11 following meanings:

12 (1) “Anaphylaxis” means a potentially life-threatening
13 hypersensitivity to a substance.

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

17 (B) Causes of anaphylaxis may include, but are not limited to,
18 an insect sting, food allergy, drug reaction, and exercise.

19 (2) “Authorizing physician and surgeon” may include, but is
20 not limited to, a physician and surgeon employed by, or contracting
21 with, a local educational agency, a medical director of the local
22 health department, or a local emergency medical services director.

23 (3) “Epinephrine auto-injector” means a disposable drug delivery
24 system with a spring-activated needle that is designed for
25 emergency administration of epinephrine to provide rapid,
26 convenient first aid for persons suffering a potentially fatal reaction
27 to anaphylaxis.

28 (4) “Qualified supervisor of health” may include, but is not
29 limited to, a school nurse.

30 (5) “Volunteer” or “trained personnel” means an employee who
31 has volunteered to administer epinephrine auto-injectors to a person
32 if the person is suffering, or reasonably believed to be suffering,
33 from anaphylaxis, has been designated by a school, and has
34 received training pursuant to subdivision (d).

35 (c) Each private elementary and secondary school in the state
36 may voluntarily determine whether or not to make emergency
37 epinephrine auto-injectors and trained personnel available at its
38 school. In making this determination, a school shall evaluate the

1 emergency medical response time to the school and determine
2 whether initiating emergency medical services is an acceptable
3 alternative to epinephrine auto-injectors and trained personnel. A
4 private elementary or secondary school choosing to exercise the
5 authority provided under this subdivision shall not receive state
6 funds specifically for purposes of this subdivision.

7 (d) Each public and private elementary and secondary school
8 in the state may designate one or more volunteers to receive initial
9 and annual refresher training, based on the standards developed
10 pursuant to subdivision (e), regarding the storage and emergency
11 use of an epinephrine auto-injector from the school nurse or other
12 qualified person designated by an authorizing physician and
13 surgeon.

14 (e) (1) Every five years, or sooner as deemed necessary by the
15 Superintendent, the Superintendent shall review minimum
16 standards of training for the administration of epinephrine
17 auto-injectors that satisfy the requirements of paragraph (2). For
18 purposes of this subdivision, the Superintendent shall consult with
19 organizations and providers with expertise in administering
20 epinephrine auto-injectors and administering medication in a school
21 environment, including, but not limited to, the State Department
22 of Public Health, the Emergency Medical Services Authority, the
23 American Academy of Allergy, Asthma and Immunology, the
24 California School Nurses Organization, the California Medical
25 Association, the American Academy of Pediatrics, Food Allergy
26 Research and Education, the California Society of Allergy, Asthma
27 and Immunology, the American College of Allergy, Asthma and
28 Immunology, the Stanford Allergy Center, and others.

29 (2) Training established pursuant to this subdivision shall include
30 all of the following:

- 31 (A) Techniques for recognizing symptoms of anaphylaxis.
- 32 (B) Standards and procedures for the storage, restocking, and
33 emergency use of epinephrine auto-injectors.
- 34 (C) Emergency followup procedures, including calling the
35 emergency 911 telephone number and contacting, if possible, the
36 pupil's parent and physician.
- 37 (D) Recommendations on the necessity of instruction and
38 certification in cardiopulmonary resuscitation.
- 39 (E) Instruction on how to determine whether to use an adult
40 epinephrine auto-injector or a junior epinephrine auto-injector,

1 which shall include consideration of a pupil's grade level or age
2 as a guideline of equivalency for the appropriate pupil weight
3 determination.

4 (F) Written materials covering the information required under
5 this subdivision.

6 (3) Training established pursuant to this subdivision shall be
7 consistent with the most recent Voluntary Guidelines for Managing
8 Food Allergies In Schools and Early Care and Education Programs
9 published by the federal Centers for Disease Control and
10 Prevention and the most recent guidelines for medication
11 administration issued by the department.

12 (4) A school shall retain for reference the written materials
13 prepared under subparagraph (F) of paragraph (2).

14 (f) A school district, county office of education, or charter school
15 shall distribute a notice at least once per school year to all staff
16 that contains the following information:

17 (1) A description of the volunteer request stating that the request
18 is for volunteers to be trained to administer an epinephrine
19 auto-injector to a person if the person is suffering, or reasonably
20 believed to be suffering, from anaphylaxis, as specified in
21 subdivision (b).

22 (2) A description of the training that the volunteer will receive
23 pursuant to subdivision (d).

24 (g) (1) A qualified supervisor of health at a school district,
25 county office of education, or charter school shall obtain from an
26 authorizing physician and surgeon a prescription for each school
27 for epinephrine auto-injectors that, at a minimum, includes, for
28 elementary schools, one regular epinephrine auto-injector and one
29 junior epinephrine auto-injector, and for junior high schools, middle
30 schools, and high schools, if there are no pupils who require a
31 junior epinephrine auto-injector, one regular epinephrine
32 auto-injector. A qualified supervisor of health at a school district,
33 county office of education, or charter school shall be responsible
34 for stocking the epinephrine auto-injector and restocking it if it is
35 used.

36 (2) If a school district, county office of education, or charter
37 school does not have a qualified supervisor of health, an
38 administrator at the school district, county office of education, or
39 charter school shall carry out the duties specified in paragraph (1).

1 (3) A prescription pursuant to this subdivision may be filled by
2 local or mail order pharmacies or epinephrine auto-injector
3 manufacturers.

4 (4) *An authorizing physician and surgeon shall not be subject*
5 *to professional review, be liable in a civil action, or be subject to*
6 *criminal prosecution for any act in the issuing of a prescription*
7 *or order pursuant to this section, unless the act constitutes gross*
8 *negligence or willful or malicious conduct.*

9 (h) A school nurse or, if the school does not have a school nurse
10 or the school nurse is not onsite or available, a volunteer may
11 administer an epinephrine auto-injector to a person exhibiting
12 potentially life-threatening symptoms of anaphylaxis at school or
13 a school activity when a physician is not immediately available.
14 If the epinephrine auto-injector is used it shall be restocked as soon
15 as reasonably possible, but no later than two weeks after it is used.
16 Epinephrine auto-injectors shall be restocked before their expiration
17 date.

18 (i) A volunteer shall initiate emergency medical services or
19 other appropriate medical followup in accordance with the training
20 materials retained pursuant to paragraph (4) of subdivision (e).

21 (j) A school district, county office of education, or charter school
22 shall ensure that each employee who volunteers under this section
23 will be provided defense and indemnification by the school district,
24 county office of education, or charter school for any and all civil
25 liability, in accordance with, but not limited to, that provided in
26 Division 3.6 (commencing with Section 810) of Title 1 of the
27 Government Code. This information shall be reduced to writing,
28 provided to the volunteer, and retained in the volunteer's personnel
29 file.

30 (k) A state agency, the department, or a public school may
31 accept gifts, grants, and donations from any source for the support
32 of the public school carrying out the provisions of this section,
33 including, but not limited to, the acceptance of epinephrine
34 auto-injectors from a manufacturer or wholesaler.

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