

CHAPTER 71

EDUCATION - PUBLIC SCHOOLS

SENATE BILL 05-156

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also REPRESENTATIVE(S) Witwer, Benefield, Berens, Borodkin, Boyd, Brophy, Buescher, Butcher, Carroll M., Carroll T., Cloer, Coleman, Frangas, Gallegos, Green, Hoppe, Kerr, King, Madden, Marshall, Merrifield, Paccione, Plant, Ragsdale, Rose, Schultheis, Solano, Stengel, and Todd.

AN ACT**CONCERNING THE "COLORADO SCHOOLCHILDREN'S ASTHMA AND ANAPHYLAXIS HEALTH MANAGEMENT ACT".**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly hereby finds that:

(a) Asthma is a chronic condition, requiring lifetime, ongoing medical intervention, and, if intervention is delayed or unavailable, symptoms can escalate and result in increased severity of the disease, hospitalization, or death;

(b) In 2001, over twenty million Americans, including six million children, had asthma. In 2000, there were one million eight hundred thousand asthma-related visits to emergency rooms of which, two hundred fourteen thousand involved children under the age of eighteen years.

(c) According to the federal centers for disease control and prevention ("CDC"), asthma is a common cause of missed school days accounting for approximately fourteen million lost school days annually, and, according to the New England Journal of Medicine, working parents of children with asthma lose an estimated one billion dollars per year in productivity;

(d) Colorado has the second highest prevalence of asthma of any state with an estimated seven-and-one-tenths percent of the population believed to have the disease, and Colorado children of one to fifteen years of age appear to be affected the most;

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(e) Colorado is one of thirty-three states, plus Washington D.C. and Puerto Rico, funded by the CDC to facilitate the formation and growth of asthma coalitions and gather asthma data for use by physicians, researchers, and public health officials in the fight against asthma in Colorado;

(f) Anaphylaxis, or anaphylactic shock, is a systemic allergic reaction that can cause death within minutes;

(g) Exposure to the affecting allergen, which may be a food, drug, or insect sting, can trigger anaphylaxis and requires prompt medical intervention with an injection of epinephrine; and

(h) Anaphylaxis occurs in some asthma patients who are at a higher risk of poor health outcomes if they experience anaphylaxis, and, according to the American academy of allergy, asthma, and immunology, people who have experienced symptoms of anaphylaxis are at risk for subsequent reactions and should carry an epinephrine auto-injector, if prescribed, with them at all times.

(2) The general assembly further finds that:

(a) The refusal of schools to permit students to carry asthma inhalers and auto-injectable epinephrine has resulted in some tragic occurrences, some resulting in death and spawning litigation;

(b) At least thirty states have legislation protecting the rights of children to carry and self-administer asthma metered-dose inhalers, and at least eighteen of these states have expanded this protection to include epinephrine auto-injectors;

(c) Schools that restrict or deny the rights of children to carry inhalers or auto-injectable epinephrine put students with asthma and severe allergic reactions, including anaphylaxis, at risk of death and also put other students at risk of witnessing a potentially life-threatening asthma attack;

(d) School districts' medication policies must be developed with the safety of all students in mind, but should allow for the correct and immediate use of asthma inhalers and auto-injectable epinephrine to avoid serious respiratory complications and improve health care outcomes;

(e) Students with asthma are covered under title II of the "Americans with Disabilities Act of 1990", section 504 of the "Rehabilitation Act of 1973", and the "Individuals with Disabilities Education Act"; and

(f) In October of 2004, the Congress enacted the "Asthmatic Schoolchildren's Treatment and Health Management Act of 2004" that gives preferences in making certain public health services administration grants and other asthma-related grants to states that allow students to self-administer medication to treat asthma and anaphylaxis.

(3) Finally, the general assembly finds that authorizing an audit of school records on asthma and anaphylaxis will benefit the general public health by defining the

extent of asthma among school children and by determining the effect of this act on the well being of children with asthma and severe allergies in schools.

SECTION 2. Article 1 of title 22, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

22-1-119.5. Asthma and anaphylaxis health management - self-administered medication. (1) THIS SECTION SHALL BE KNOWN AND MAY BE CITED AS THE "COLORADO SCHOOLCHILDREN'S ASTHMA AND ANAPHYLAXIS HEALTH MANAGEMENT ACT".

(2) (a) A STUDENT WITH ASTHMA, SEVERE ALLERGIES, OR OTHER RELATED, LIFE-THREATENING CONDITION MAY POSSESS AND SELF-ADMINISTER MEDICATION TO TREAT THE STUDENT'S ASTHMA, ANAPHYLAXIS, OR OTHER RELATED, LIFE-THREATENING CONDITION IF THE STUDENT HAS A TREATMENT PLAN APPROVED PURSUANT TO THIS SUBSECTION (2).

(b) A PUBLIC SCHOOL SHALL, AND A NONPUBLIC SCHOOL IS ENCOURAGED TO, APPROVE A TREATMENT PLAN FOR A STUDENT ENROLLED IN THE SCHOOL TO POSSESS AND SELF-ADMINISTER MEDICATION FOR ASTHMA OR ANAPHYLAXIS IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

(I) A HEALTH CARE PRACTITIONER HAS PRESCRIBED MEDICATION FOR USE BY THE STUDENT DURING SCHOOL HOURS, AT SCHOOL-SPONSORED ACTIVITIES, AND WHILE IN TRANSIT TO OR FROM SCHOOL OR SCHOOL-SPONSORED ACTIVITIES AND HAS INSTRUCTED THE STUDENT IN THE CORRECT AND RESPONSIBLE USE OF THE MEDICATION.

(II) THE STUDENT DEMONSTRATES TO THE HEALTH CARE PRACTITIONER OR THE HEALTH CARE PRACTITIONER'S DESIGNEE AND THE SCHOOL NURSE THE SKILL LEVEL NECESSARY TO USE THE MEDICATION AND ANY DEVICE THAT IS NECESSARY TO ADMINISTER THE MEDICATION AS PRESCRIBED.

(III) THE SCHOOL NURSE AND THE HEALTH CARE PRACTITIONER COLLABORATE TO FORMULATE A WRITTEN TREATMENT PLAN FOR MANAGING ASTHMA OR ANAPHYLAXIS EPISODES OF THE STUDENT AND FOR MEDICATION USE BY THE STUDENT DURING SCHOOL HOURS, AT SCHOOL-SPONSORED ACTIVITIES, AND WHILE IN TRANSIT TO OR FROM SCHOOL OR SCHOOL-SPONSORED ACTIVITIES.

(IV) THE STUDENT'S PARENT OR LEGAL GUARDIAN COMPLETES AND SUBMITS TO THE PUBLIC OR NONPUBLIC SCHOOL THE DOCUMENTATION REQUIRED BY RULE OF THE STATE BOARD OF EDUCATION, INCLUDING BUT NOT LIMITED TO:

(A) A WRITTEN MEDICAL AUTHORIZATION THAT INCLUDES THE SIGNATURE OF THE HEALTH CARE PRACTITIONER FOR THE MEDICATION PRESCRIBED; THE NAME, PURPOSE, PRESCRIBED DOSAGE, FREQUENCY, AND LENGTH OF TIME BETWEEN DOSAGES OF THE MEDICATIONS TO BE SELF-ADMINISTERED; AND CONFIRMATION FROM THE HEALTH CARE PRACTITIONER THAT THE STUDENT HAS BEEN INSTRUCTED AND IS CAPABLE OF SELF-ADMINISTRATION OF THE PRESCRIBED MEDICATIONS;

(B) A WRITTEN STATEMENT FROM THE STUDENT'S PARENT OR LEGAL GUARDIAN

RELEASING THE SCHOOL, SCHOOL DISTRICT, ANY ASSOCIATED ENTITY, AND EMPLOYEES AND VOLUNTEERS OF THE SCHOOL, SCHOOL DISTRICT, AND ASSOCIATED ENTITY FROM LIABILITY, EXCEPT IN CASES OF WILLFUL OR WANTON CONDUCT OR DISREGARD OF THE CRITERIA OF THE TREATMENT PLAN; AND

(C) A WRITTEN CONTRACT BETWEEN THE SCHOOL NURSE, THE STUDENT, AND THE STUDENT'S PARENT OR LEGAL GUARDIAN ASSIGNING LEVELS OF RESPONSIBILITY TO THE PARENT OR LEGAL GUARDIAN, STUDENT, AND SCHOOL EMPLOYEES.

(c) A TREATMENT PLAN SHALL BE EFFECTIVE ONLY FOR THE SCHOOL YEAR IN WHICH IT IS APPROVED. THE PUBLIC SCHOOL SHALL APPROVE A NEW TREATMENT PLAN FOR EACH SCHOOL YEAR SO LONG AS THE PLAN MEETS THE CONDITIONS SPECIFIED IN PARAGRAPH (b) OF THIS SUBSECTION (2). THE PARENT OR LEGAL GUARDIAN SHALL SUBMIT A NEW TREATMENT PLAN ANNUALLY OR MORE OFTEN IF CHANGES OCCUR TO THE STUDENT'S HEALTH OR PRESCRIBED TREATMENT.

(3) A STUDENT WITH A TREATMENT PLAN APPROVED PURSUANT TO SUBSECTION (2) OF THIS SECTION MAY POSSESS AND SELF-ADMINISTER HIS OR HER MEDICATION WHILE IN SCHOOL, WHILE AT SCHOOL-SPONSORED ACTIVITIES, AND WHILE IN TRANSIT TO OR FROM SCHOOL OR SCHOOL-SPONSORED ACTIVITIES.

(4) WITH THE APPROVAL OF THE PARENT OR LEGAL GUARDIAN OF A STUDENT WITH A TREATMENT PLAN APPROVED PURSUANT TO SUBSECTION (2) OF THIS SECTION, A SCHOOL MAY MAINTAIN ADDITIONAL ASTHMA OR ANAPHYLAXIS MEDICATION TO BE KEPT AT THE SCHOOL IN A LOCATION TO WHICH THE STUDENT HAS IMMEDIATE ACCESS IN THE EVENT OF AN ASTHMA OR ANAPHYLAXIS EMERGENCY.

(5) IMMEDIATELY AFTER USING AN EPINEPHRINE AUTO-INJECTOR DURING SCHOOL HOURS, A STUDENT SHALL REPORT TO THE SCHOOL NURSE, TO THE DESIGNEE OF THE SCHOOL NURSE, OR TO SOME ADULT AT THE SCHOOL TO ENABLE THE SCHOOL NURSE, NURSE'S DESIGNEE, OR OTHER ADULT TO PROVIDE THE APPROPRIATE FOLLOW-UP CARE, WHICH SHALL INCLUDE MAKING A 911 EMERGENCY CALL.

(6) IF THE PROVISIONS OF THIS SECTION ARE MET, A SCHOOL, SCHOOL DISTRICT, SCHOOL DISTRICT DIRECTOR, OR SCHOOL OR SCHOOL DISTRICT EMPLOYEE OR A VOLUNTEER NOT OTHERWISE PROVIDED FOR UNDER SECTION 13-21-108, C.R.S., SHALL NOT BE LIABLE IN A SUIT FOR DAMAGES AS A RESULT OF AN ACT OR OMISSION RELATED TO A STUDENT'S OWN USE OF THE STUDENT'S EPINEPHRINE AUTO-INJECTOR OR ANY OTHER MEDICATION CONTAINED IN AN APPROVED TREATMENT PLAN UNLESS THE DAMAGES WERE CAUSED BY WILLFUL OR WANTON CONDUCT OR DISREGARD OF THE CRITERIA OF THE TREATMENT PLAN.

(7) NOTHING IN THIS SECTION SHALL BE INTERPRETED TO CREATE A CAUSE OF ACTION OR INCREASE OR DIMINISH THE LIABILITY OF ANY PERSON.

(8) THE STATE BOARD OF EDUCATION, WITH ASSISTANCE FROM THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, SHALL PROMULGATE RULES FOR TREATMENT PLANS FOR THE SELF-ADMINISTRATION OF MEDICATIONS PURSUANT TO THIS SECTION.

(9) THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT IS AUTHORIZED TO AUDIT SCHOOL RECORDS FOR THE DETERMINATION OF ASTHMA AND SEVERE ALLERGY

RATES WITHIN THE SCHOOLS AND TO DETERMINE THE PROPORTION OF THOSE STUDENTS WITH ASTHMA AND SEVERE ALLERGIES IN THE SCHOOLS THAT HAVE TREATMENT PLANS ALLOWING FOR SELF-ADMINISTRATION OF ASTHMA AND SEVERE ALLERGY MEDICATIONS. THE AUDIT SHALL DEFINE THE EXTENT OF ASTHMA AND SEVERE ALLERGIES AMONG STUDENTS AND DETERMINE THE EFFECT OF THIS SECTION ON THE WELL-BEING OF CHILDREN WITH ASTHMA AND SEVERE ALLERGIES IN SCHOOLS. THE AUDIT SHALL BE CONDUCTED IN CONFORMANCE WITH THE REQUIREMENTS OF THE "FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT OF 1974", 20 U.S.C. SEC. 1232g.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 14, 2005