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H.B. 231
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Bill Analysis

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Version: As Passed by the House

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SUMMARY

Epinephrine autoinjectors in schools

- Requires the Department of Education to compile an annual list of organizations and companies that offer free and reduced cost epinephrine autoinjectors and make that list available to each school district, other public schools, and chartered nonpublic schools.

Food allergy training and instruction in schools

- Permits public schools to create and implement training for all staff members and age-appropriate instructional materials for students in grades K-12 on food allergies.
- Provides a qualified immunity from liability 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 the food allergy training or instruction.

Procurement of glucagon by schools and camps

- Permits public and private schools and camps to procure injectable or nasally administered glucagon without a license for use in emergency situations for individuals with diabetes, and specifies procedures for those that do so.
- Permits a school district to deliver injectable or nasally administered glucagon it receives to a school under its operation.
- Grants schools and camps, and their employees, contractors, and volunteers, qualified immunity from liability in civil actions for damages allegedly arising from the procurement, maintenance, access, or use of injectable or nasally administered glucagon.
- Permits drug manufacturers and wholesalers to donate injectable and nasally administered glucagon to schools or camps and allows schools and camps to receive financial donations from individuals for their purchase.

Bill title

- Entitles the bill's provisions regarding epinephrine autoinjectors and food allergy education and staff training as the "Allison Rose Act."

DETAILED ANALYSIS

Epinephrine autoinjectors in schools

The bill requires the Department of Education to compile an annual list of organizations and companies that offer free and reduced cost epinephrine autoinjectors to school districts, community schools, STEM schools, college-preparatory boarding schools, and chartered nonpublic schools. The Department must make this information available on its website and send a copy electronically or by mail to each district and school.¹

Food allergy education and staff training in public schools

The bill permits each school district, community school, and STEM school to create food allergy training for all staff members as well as age appropriate instruction for students in grades K-12. Topics may include ways to assist someone experiencing an allergic reaction. The bill specifies that staff training will qualify as a professional development activity for the renewal of an educator's license.²

Current law requires public and chartered nonpublic schools to create a written policy concerning students with peanut and other food allergies. The bill specifies that the policies focus on "food allergies," thereby removing the specification of "peanut" allergies.³

Furthermore, the bill specifies that if a school board chooses to develop staff training and instruction for students on food allergies that training may include the following:

1. Instruction in food allergies;
2. Signs and symptoms of anaphylaxis;
3. Prevention of allergic reactions;
4. Management and administration of epinephrine; and
5. Follow-up and reporting procedures.⁴

¹ R.C. 3301.135

² R.C. 3313.719(B) and (C). This section applies to community schools and STEM schools through references in R.C. 3314.03(A)(11)(d) and 3326.11, neither in the bill.

³ R.C. 3313.719(A).

⁴ R.C. 3313.719(C).

Immunity from civil liability

The bill provides a qualified immunity from liability for damages in a civil action for injury, death, or loss to person or property that allegedly arise from an act or omission associated with the food allergy training or instruction, unless that act or omission constitutes willful or wanton misconduct, for all of the following:

1. A school or school district;
2. A member of a district board of education;
3. A licensed health professional authorized to prescribe drugs who personally furnishes or prescribes epinephrine autoinjectors; and
4. An anaphylaxis training organization and its personnel where leadership includes a physician.⁵

Procurement of glucagon by schools and camps

Synthetic glucagon is an emergency medicine, dispensed only by prescription, that may be administered to treat severe low blood sugar in persons with diabetes. Currently, synthetic glucagon is available in forms that may be injected or administered nasally.⁶ Ohio law generally prohibits the sale, donation, and possession of prescription drugs (referred to as “dangerous drugs” in the Revised Code⁷) by individuals or entities except when the individual or entity is (1) exempt from the prohibition under law or (2) possesses the applicable terminal distributor of dangerous drugs (TDDD) license from the Ohio State Board of Pharmacy to possess, sell, or have custody or control over prescription drugs.⁸

The bill authorizes a school governing authority (i.e., the board of education of a school district, governing authority of a community school, governing body of a STEM school, board of trustees of a college-preparatory boarding school, or governing authority of a chartered or nonchartered nonpublic school), a residential camp, child day camp, or camp operated by a specified political subdivision⁹ to procure a supply of injectable or nasally administered glucagon for use in emergency situations without processing the otherwise required license.¹⁰ Associated with this authorization, the bill exempts school governing authorities and camps

⁵ R.C. 3301.719(E).

⁶ Healthline, *How Does Glucagon Work to Treat Hypoglycemia? Facts and Tips*, available at <https://www.healthline.com/health/severe-hypoglycemia/how-glucagon-works>.

⁷ R.C. 4729.01(F).

⁸ R.C. 4729.51.

⁹ Specifically, a camp operated by a county, township, municipal corporation, township park district, park district, or joint recreation district (R.C. 5101.78(B)).

¹⁰ R.C. 3313.7115(B), 3313.7116, 3314.147(A), 3326.60(A), and 3328.38(A).

that procure glucagon in accordance with the bill from the prohibition regarding the sale, donation, or transfer of possession of dangerous drugs.¹¹

Under the bill, a school or camp has two options for procuring injectable or nasally administered glucagon:¹²

1. Have a licensed health professional authorized to prescribe drugs (a “prescriber”) personally furnish the glucagon to the school, school district, or camp or issue a prescription for the drug in the name of the school, school district, or camp; or
2. Have the school district superintendent, school governing authority, or camp obtain a prescriber-issued protocol that includes definitive orders for injectable or nasally administered glucagon and the dosages to be administered.

Donations from manufacturers; monetary donations

The bill permits a wholesale distributor of dangerous drugs or manufacturer of dangerous drugs to donate injectable or nasally administered glucagon to schools or camps. It also allows schools and camps to accept monetary donations to purchase the drug.¹³

Procedures for maintenance and use of glucagon

If a school or camp elects to procure injectable or nasally administered glucagon, the bill requires that it adopt a policy authorizing 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. The superintendent, governing authority, or camp must consult with a licensed health professional who is authorized to prescribe drugs (a “prescriber”) to develop a policy containing procedures for the maintenance and use of injectable or nasally administered glucagon.¹⁴ The policy must do all of the following:¹⁵

--Identify the one or more locations in each school or at camp in which injectable or nasally administered glucagon must be stored;

--Specify the conditions under which injectable or nasally administered glucagon must be stored, replaced, and disposed;

--Specify the individuals employed by or under contract with a school (in addition to a school nurse or athletic trainer) or, if a camp, the employees, contractors, or volunteers, who may access and use injectable or nasally administered glucagon in an emergency situation;

¹¹ R.C. 4729.51(I).

¹² R.C. 3313.7115(A), 3313.7116(A), 3314.147(A), 3326.60(A), 3328.38(A), and 5101.78(B).

¹³ R.C. 3313.7115(F), 3313.7116(C), 3314.147(C), 3326.60(C), 3328.38(C), and 5101.78(F).

¹⁴ R.C. 3313.7115(C), 3313.7116(A), 3314.147(A), 3326.60(A), 3328.38(A), and 5101.78(C).

¹⁵ R.C. 3313.7115(D), 3313.7116(A), 3313.147(A), 3326.60(A), 3328.38(A), and 5101.78(D).

--Specify any training that individuals (other than a school nurse or athletic trainer) must complete before being authorized to access and use injectable or nasally administered glucagon;

--Specify that assistance from an emergency medical services provider must be requested immediately after a dose of glucagon is administered; and

--Specify the individuals to whom a dosage of glucagon may be administered in an emergency situation.

The bill encourages a school governing authority or camp that elects to procure injectable or nasally administered glucagon to maintain at least two doses of the drug.¹⁶

Reporting of procurement and use

The bill requires a school district or public or private school that elects to procure injectable or nasally administered glucagon as permitted by the bill to report to the Ohio Department of Education each procurement and each occurrence in which a dose of the drug is used from the school's supply.¹⁷

Similarly, the bill requires a camp that elects to procure injectable or nasally administered glucagon as permitted by the bill to report to the Ohio Department of Job and Family Services (ODJFS) each procurement and each occurrence in which a dose of the drug is used from the camp's supply.¹⁸

Delivery of glucagon to individual schools

The bill permits the board of education of a school district to deliver injectable or nasally administered glucagon to a school under its control if the purpose of the delivery is to give possession of glucagon to the school for use in emergency situations in accordance with the bill.¹⁹

Qualified civil immunity

The bill specifies that all school districts, public and private schools, and camps that elect to procure injectable and nasally administered glucagon, as well as their governing authorities, employees, contractors, and volunteers, as applicable, and any prescriber who personally furnishes or prescribes the glucagon, are not liable in damages in a civil action arising from an act or omission associated with procuring, maintaining, accessing, or using injectable or nasally administered glucagon under the bill unless the act or omission constitutes willful or wanton misconduct.²⁰

¹⁶ R.C. 3313.7115(B), 3313.7116(A), 3314.147(A), 3326.60(A), 3328.38(A), and 5101.78(B).

¹⁷ R.C. 3313.7115(G), 3313.7116(D), 3314.147(D), 3326.60(D), and 3328.38(D).

¹⁸ R.C. 5101.78(G).

¹⁹ R.C. 4729.51(I).

²⁰ R.C. 3313.7115(E), 3313.7116(B), 3314.147(B), 3326.60(B), 3328.38(B), and 5101.78(E).

Background on diabetes care in schools and camps

Ohio law

Schools

The diabetes care in schools statute outlines public and private schools' obligations with respect to a student with any type of diabetes.²¹ It was enacted in 2014 in H.B. 264 of the 130th General Assembly.

The statute specifies that schools must ensure that each student who has diabetes receives "appropriate and needed diabetes care in accordance with an order signed by the student's treating practitioner."²² Accordingly, the treating practitioner's orders govern the treatment a student is to receive while at school. Also, each student's order will be unique to the individual.

The law provides examples of the diabetes care activities that a treating practitioner's order will cover:²³

- Checking and recording blood glucose and ketone levels or assisting the student with checking and recording these levels;
- Responding to blood glucose levels that are outside of the student's target range;
- In the case of severe hypoglycemia, administering glucagon and other emergency treatments as prescribed;
- Administering insulin or assisting the student in self-administering insulin through the insulin delivery system the student uses;
- Providing oral diabetes medications;
- Understanding recommended schedules and food intake for meals and snacks in order to calculate medication dosages pursuant to the order of the student's treatment practitioner;
- Following the treating practitioner's instructions regarding meals, snacks, and physical activity; and
- Delivering diabetes medication.

The statute limits who (other than the student to himself or herself) may administer diabetes medication in the school setting to a school nurse or a school employee who has been trained to provide diabetes care.²⁴ The statute also authorizes a school to provide training in

²¹ R.C. 3313.7112, not in the bill.

²² R.C. 3313.7112(B)(1), not in the bill.

²³ R.C. 3313.7112(B)(1), not in the bill.

²⁴ R.C. 3313.7112(C), not in the bill.

the recognition of hypoglycemia and hyperglycemia and the responsive emergency measures to other persons who interact with the student, such as bus drivers.²⁵

Day camps

ODJFS has adopted rules governing medication administration to children attending child day camps that provide publicly funded child care or that voluntarily register with ODJFS.²⁶ Such camps are referred to as “approved child day camps.”²⁷

Under those rules, all of the following apply with respect to the administration of prescription medication:²⁸

--The camp must ensure that the medication is stored in the original container with the prescription label that includes the child’s full name, a current dispensing date within the previous 12 months, and exact dosage and directions for use;

--The camp must not administer the medication for any period of time beyond the date indicated by the prescriber on the prescription label, for 12 months from the date on the form, or after the expiration date on the medication, whichever comes first;

--Prior to administering the medication, the camp must have written permission from the parent for each medication to be administered; and

--The camp must document each administration of medication on a form with specified information.

Also, a child attending an approved child day camp who has diabetes must have a written medical care plan. The written medical care plan must include all of the following:²⁹

--The symptoms the staff should monitor which may require staff to take action;

--Administering procedures which require staff to be trained on those procedures;

--Whether the child needs to avoid specific foods, environmental conditions, or activities; and

--Permission for the child to carry and administer their own emergency medication (i.e., glucagon), if applicable.

The approved child day camp must:³⁰

--Ensure the child’s parent completes and signs the written medical care plan;

²⁵ R.C. 3313.7112(F), not in the bill.

²⁶ R.C. 5104.21(C), not in the bill, and Ohio Administrative Code (O.A.C.) 5101:2-18-11.

²⁷ O.A.C. 5101:2-18-01(C).

²⁸ O.A.C. 5101:2-18-11(A).

²⁹ O.A.C. 5101:2-18-11(C)(1).

³⁰ O.A.C. 5101:2-18-11(C)(2).

--Review the plan for completeness and ensure it is signed by an administrator or designee;

--Implement and follow all requirements of the plan;

--Ensure the plan is signed by any trained child day camp staff member who is providing care to the child; and

--Maintain the plan in a location that can be easily and quickly accessed at all times, including on field trips and when the child is off-site.

The camp may require a physician's statement within a designated timeframe. There must be a trained staff member on-site at all times whenever a child with diabetes is present.³¹

Residential camps

In general, residential (or overnight) camps are not regulated by ODJFS. The Director of Health has adopted rules governing residential camps that largely address sanitation issues; the rules do not address medication administration.³² The Pharmacy Board has taken the position that once drugs are dispensed to a patient by a pharmacist, the drugs become the patient's property and may be stored in a secure place with the patient's consent.³³ Since a child is legally below the age of consent,³⁴ a residential camp may store glucagon prescribed for a child with consent from the child's parents or someone legally authorized to consent on the child's behalf.

Federal law

Two federal laws protect students with diabetes from discrimination, ensuring that children with diabetes receive the care they need while at school or camp, including glucagon administration should they need it.

Section 504 of the Rehabilitation Act of 1973

Section 504 of the Rehabilitation Act of 1973 ("Section 504") is a federal civil rights law that prohibits discrimination on the basis of disability. A disability under Section 504 is a "physical or mental impairment that substantially limits one or more major life activities." Individuals with diabetes are considered to have a Section 504 disability, because their

³¹ O.A.C. 5101:2-18-11(C)(4) and (6).

³² O.A.C. Chapter 3701-25.

³³ The Athletic Trainers Section of the Ohio Occupational Therapy, *Physical Therapy, and Athletic Trainers Board, Guidelines for the Storage and Use of Emergency Inhalers and Epi-pens*, available at <https://otptat.ohio.gov/Portals/0/Pubs/Guidelines%20for%20the%20Storage%20and%20Use%20of%20Emergency%20Inhalers%20and%20Epi%202015.pdf>.

³⁴ In Ohio, the age of majority is 18 years "for all purposes." (R.C. 3109.01, not in the bill.)

endocrine system, a major life activity that helps regulate bodily functions, is substantially limited.³⁵

All schools and camps, including private and religious camps, that receive federal funding must comply with Section 504. The obligations of private and religious schools and camps, however, are somewhat different.³⁶

Americans with Disabilities Act

The Americans with Disabilities Act (ADA) prohibits most schools and camps from discriminating against children with diabetes. Public schools and camps qualify as “public programs” under Title II, while private schools and camps are usually “public accommodations” under Title III. Religious schools and camps are excluded under this law.³⁷ Otherwise, the protections for children under the ADA are similar to Section 504.³⁸

HISTORY

| Action | Date |
|--|----------|
| Introduced | 05-02-19 |
| Reported, H. Primary & Secondary Education | 12-03-20 |
| Passed House (95-1) | 12-03-20 |

H0231-PH-133/ar

³⁵ American Diabetes Association, *Section 504 of the Rehabilitation Act of 1973*, available at <https://www.diabetes.org/resources/know-your-rights/section-504-rehabilitation-act-1973>.

³⁶ *Id.*; American Diabetes Association, *The Rights of Children with Diabetes at Camp* (last edited April 27, 2016), on file with the drafter.

³⁷ *Id.*

³⁸ American Diabetes Association, *Fact Sheet: The Legal Rights of Students with Diabetes on Field Trips and in Extracurricular Activities*, available at <http://www.diabetesnd.org/image/cache/ADA.Fact.Sheet.Extracurriculars.pdf>.