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House Bill 4352 (as passed by the House)
House Bill 4353 (Substitute H-2 as passed by the House)
Sponsor: Representative Lisa Posthumus Lyons
House Committee: Education
Senate Committee: Education

Date Completed: 10-30-13

CONTENT

House Bill 4352 would amend the Public Health Code to do the following:

- Allow a prescriber to prescribe auto-injectable epinephrine (AIE) to a school board.
- Allow a dispensing prescriber or a pharmacist to dispense AIE to a school board.
- Provide civil immunity to a person who prescribed or dispensed AIE to a school in certain circumstances.
- Allow a school employee who was a licensed registered professional nurse or was trained in administering AIE to possess and administer it.

House Bill 4353 (H-2) would amend the Revised School Code to do the following:

- Require a school board to develop and implement policies that provided for each school to possess two AIE devices, and authorized school nurses and trained school employees to administer AIE to an individual on school grounds who was believed to be having an anaphylactic reaction.
- Require a school board to have a certain number of employees who were trained in administering AIE.
- Provide civil immunity to a school district and certain school officials with regard to an authorized person's provision of medicine or AIE to a pupil under certain circumstances.
- Provide civil and criminal immunity to a school employee who in good faith administered AIE and complied with the provisions of the bill and school board policies regarding AIE, except in cases of grossly negligent or intentional conduct.
- Require the Department of Education to identify, develop, and adopt revisions to medication administration guidelines, including training needs and requirements for administering, maintaining, and storing AIE devices.
- Require a school district to report all instances of AIE administration to the Department at least annually.
- Require a school district to attempt to obtain funding or resources from a source other than the State to meet the bill's requirements.
- Allow a school board to apply to the Department for unfunded costs of complying with the bill.
- Require the Legislature to appropriate funds for the reimbursement.

-- Require the Department to submit to the Legislature an annual report.

House Bill 4352 is tie-barred to House Bill 4353.

House Bill 4352

The bill would allow a prescriber to issue a prescription for, and allow a dispensing prescriber or pharmacist to dispense, AIE to a school board for the purpose of meeting the requirements of proposed Section 1179a of the Revised School Code (proposed by House Bill 4353 (H-2), as described below). The prescriber, dispensing prescriber, or pharmacist, as appropriate, would have to insert the name of the school board as the name of the patient when issuing a prescription for or dispensing an AIE to a school board.

Under the Public Health Code, a pharmacist may dispense a prescription only if he or she determines, in addition to other criteria, that the prescription was issued pursuant to an existing physician-patient or dentist-patient relationship. A dispensing prescriber must dispense a drug in a container that bears a label that includes the patient's name and record number. An electronically transmitted prescription must include the full name of the patient. Under the bill, these provisions would not apply to an AIE prescription to a school district.

A dispensing prescriber must maintain a complete record, including prescription drug information, in a patient's chart or clinical record. The prescriber must distinguish between prescription drugs dispensed to the patient, and prescription drugs prescribed for the patient. The bill would require that the prescriber also distinguish between these drugs and prescription drugs dispensed or prescribed to school boards according to the requirements in the bill.

A prescriber who issued a prescription for or a dispensing prescriber or pharmacist who dispensed AIE to a school board as authorized under the bill would not be liable in a civil action for a properly stored and dispensed AIE device that was a proximate cause of injury or death to an individual due to the administration of or failure to administer AIE.

The bill also would allow a school employee who was a licensed registered professional nurse or was trained in administering AIE to possess and administer the AIE under proposed Section 1179a of the Revised School Code.

House Bill 4353 (H-2)

Department Guidelines

The bill would require the Department of Education to identify, develop, and adopt appropriate revisions to its medication administration guidelines. This would include specification of training needs and requirements for the administration and maintenance of stock AIE devices, including stocking of both junior and regular dose AIE devices, as necessary, and storage requirements. The Department would have to work in conjunction with the Department of Community Health, and with input from the Michigan Association of School Nurses, the Michigan Nurses Association, the Michigan Parent Teacher Association, the American College of Allergy, Asthma, and Immunology, the Michigan Chapter of the American Academy of Pediatrics, the School-Community Health Alliance of Michigan, and other school health organizations and entities.

School Employees & Board Policies

The bill would allow a licensed registered professional nurse who was employed or contracted by a school district, or a school employee who was trained in the administration of AIE, to possess and administer an AIE device.

Beginning in the 2014-2015 school year, a school board would have to ensure that each school within the school district had a certain number of employees who were trained in the appropriate use and administration of AIE. In a school with an instructional and administrative staff of at least 10, there would have to be at least two trained employees. In a school with a staff of less than 10, there would have to be at least one trained employee. Employee training would have to be conducted under the supervision of, and include evaluation by, a licensed registered professional nurse.

By the beginning of the 2014-2015 school year, a school board would have to develop and implement policies that were consistent with the Department's revised medication administration guidelines. The policies also would have to provide for the possession of at least two AIE devices, to be used for administration by a licensed registered professional nurse who was employed or contracted by the school district, or by a properly trained school employee, in each school that the board operated. The policies would have to authorize a licensed professional registered nurse who was properly trained in administering AIE to administer AIE to a pupil who had a prescription on file at the school, and any other individual on school grounds who was believed to be having an anaphylactic reaction.

The policies would have to require notification to the parent or legal guardian of a pupil to whom AIE was administered.

Civil & Criminal Immunity

Currently, a school administrator, teacher, or other school employee designated by the school administrator, who in good faith administers medication to a pupil in the presence of another adult or in an emergency that threatens the life or health of the pupil, with written permission of the pupil's parent or guardian, and in compliance with the instructions of a physician, physician's assistant, or certified nurse practitioner, is not liable in a criminal action or for civil damages as a result of an act or omission in the administration of the medication, except for an act or omission amounting to gross negligence or willful and wanton misconduct.

The bill would include within this provision a school employee who in good faith administered AIE to an individual consistent with the requirements in the bill.

The bill also provides that a school district, nonpublic school, member of a school board, or director or officer of a nonpublic school would not be liable for damages in a civil action for injury, death, or loss to person or property that allegedly arose from a person who acted under these provisions.

Funding

In fulfilling the bill's requirements, a school board would have to attempt to obtain funding or resources from private sources, or another source other than the State. If a school board were unable to get alternative funding, the board could apply to the Department for reimbursement for the unfunded costs of compliance, in the form and manner prescribed by the Department. The Legislature would have to appropriate funds for making the reimbursement. The Department would have to make the reimbursement according to the appropriation.

Department & School District Reports

At least annually, a school district would have to report to the Department all instances of AIE administration to a pupil at school. The reporting would have to be in a manner and form prescribed by the Department and include at least all of the following:

- The number of instances of administration of AIE to a pupil at school in a school year.
- The number of pupils who were administered AIE at school who were not previously known to be severely allergic.
- The number of pupils who were administered AIE at school using the school's stock of AIE.

The Department would have to submit to the Legislature an annual report that detailed the number of school boards that applied for reimbursement and the number that were able to secure alternative funding.

MCL 333.17745 et al. (H.B. 4352)
380.1178 & 333.1179 (H.B. 4353)

Legislative Analyst: Glenn Steffens

FISCAL IMPACT

House Bill 4352

The bill would have no fiscal impact on State or local government.

House Bill 4353 (H-2)

The bill would increase costs to the Michigan Department of Education by requiring the Department to identify, develop, and adopt appropriate revisions to the medication administration guidelines as specified under the bill. Costs likely would be minimal.

Under proposed Section 1179a, costs for local schools would increase because of the requirements for two epinephrine auto-injectors at each school building, training in the administration of epinephrine auto-injectors, and annual reporting on instances of administration of epinephrine auto-injectors, as specified under the bill. The bill would require school boards to seek funding or resources from private sources or sources other than the State, but if those funds were insufficient to cover the costs identified above, the school boards could apply to the Department for reimbursement. The bill would require the Legislature to appropriate funds for making the reimbursement.

It is unknown the extent to which private or other non-State funds would be available to pay for the requirements of this legislation under Section 1179a. To estimate conservatively (by assuming no private or other non-State resources), the cost to the State for epinephrine auto-injectors could range from \$500,000 to \$600,000 per year (using a cost of \$140 for a two-pack of epinephrine auto-injectors multiplied by the number of school buildings in Michigan), on top of the cost for training staff in the administration of the medication, along with the potential cost of paying for a contracted nurse if a school board chose to use a contracted nurse instead of district staff for the administration of the medication, as allowed under Section 1179a(2).

The bill also could result in savings to affected local school districts because of the language added in Section 1178(3) that would remove any liability for damages in a civil action for injury, death, or loss to person or property allegedly arising from a person administering medication under this section. Current law states that personnel of a school are not liable in a criminal action or for civil damages, but does not provide such immunity to the districts themselves. Therefore, the proposed language could provide district savings if there were situations in which a district was sued for damages due to the administration of medication

by district personnel, and the district was found guilty and, without this language, would be ordered to pay damages.

Fiscal Analyst: Kathryn Summers

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.