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FISCAL IMPACT REPORT

ORIGINAL DATE 01/22/14

SPONSOR Smith, J LAST UPDATED _____ HB 49

SHORT TITLE School Use of Emergency Medications SB _____

ANALYST Armstrong

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		
\$400.0	\$400.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 52 and HB 53

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)
 Department of Health (DOH)
 Attorney General's Office (AGO)
 Administrative Office of the Courts (AOC)
 Medical Board (MB)
 Board of Nursing (BN)
 Public Education Department (PED)

SUMMARY

Synopsis of Bill

House Bill 49 creates new sections in the Public School Code and the Public Health Act requiring schools to stock and provide or administer emergency medication to treat students apparently suffering from respiratory distress or anaphylaxis. This bill requires school boards and governing bodies of charter schools to provide its schools with albuterol and epinephrine, or other appropriate emergency medications as recommended by DOH. The bill also calls for disposal of expired emergency medication pursuant to DOH or Board of Pharmacy regulations.

HB 49 requires local school boards and governing bodies of charter schools to promulgate policies to: (1) recognize the symptoms of respiratory distress and anaphylaxis; (2) immediately initiate an emergency medical system response; (3) have a school nurse or other authorized

person administer emergency medication; (4) notify the student's parent or guardian; and (5) continue to monitor the student's condition and deliver any additional treatment indicated until an emergency responder arrives. The policies regarding epinephrine must be published on the board or governing body's website. Schools must have at least one personnel trained to administer epinephrine on the premises during operating hours.

HB 49 calls for administering these emergency medications to students reasonably believed to be experiencing respiratory distress or anaphylaxis regardless of whether the student has been diagnosed with asthma or a severe allergy. The bill provides limited immunity from civil liability for individuals prescribing, purchasing, receiving, maintaining, providing, or administering emergency medication to a person reasonably believed to be experiencing anaphylaxis. The bill also states that such actions do not constitute the practice of medicine. The immunity does not apply to gross, willful, or wanton negligence.

HB 49 appropriates \$400,000 to DOH to provide emergency medication to treat respiratory distress or anaphylaxis in schools. This bill allows DOH, school boards, and governing bodies of charter schools to accept gifts, grants, bequests, and donations from any source to carry out its provisions.

FISCAL IMPLICATIONS

The appropriation of \$400,000 to DOH contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY15 shall revert to the general fund.

SIGNIFICANT ISSUES

HB 49 authorizes health care practitioners employed or authorized by DOH to prescribe emergency medications to a school or school district, and allows pharmacists to fill such prescriptions. However, according to RLD and AGO analysis, pharmacies and wholesalers will not sell to unlicensed entities, e.g. schools and school districts. Moreover, RLD states that HB 49 would require the medical and nursing boards to modify their unprofessional conduct rules to allow standing orders for medications in schools. See 16.10.8.8.L. NMAC. AGO and RLD also state that 26-1-16 NMSA 1978 requires proper licensure to acquire and possess prescription drugs, and that HB 49 authorizes unlicensed individuals to receive and administer prescription drugs to children without requiring consent from parents.

The immunity provided in HB 49 does not extend to respiratory distress. This may expose a school nurse or other authorized individual to liability if a student is apparently suffering from respiratory distress, but has an allergic reaction to the provided albuterol. Moreover, the immunity is not limited to individuals acting pursuant to the bill's additions to the Public School Code and the Public Health Act. This may allow any individual administering emergency medication for apparent anaphylaxis to claim immunity.

ADMINISTRATIVE IMPLICATIONS

HB 49 would require additional staff time to participate in the development and implementation of policies and the distribution of emergency medications in schools. The bill requires DOH to develop rules and make recommendations for each school district and governing body of a

charter school electing to provide emergency medication. These rules must address administering albuterol and epinephrine, preventing and treating respiratory distress and anaphylaxis, the requirement that one or more trained personnel is on school premises during operating hours, maintenance and storage of epinephrine, and the disposal of expired emergency medication.

RELATIONSHIP

House Bill 52 is very similar to HB 49. The major differences are: (1) HB 52 allows school boards and governing bodies to decide to provide emergency medication while HB 49 requires this of them; and (2) HB 52 does not include an appropriation. Senate Bill 75 duplicates HB 52.

House Bill 53 removes language from the School Discipline Policies section of the Public School Code and adds a new section with a similar effect. The bill allows students to carry and self-administer emergency medication for the treatment of asthma, respiratory distress, or anaphylaxis.

TECHNICAL ISSUES

Section 2(K) defines “trained personnel” to include a school nurse, school principal, or “school leader.” However, the term “school leader” is not defined.

HB 49 does not define the terms “school district” or “governing body of a charter school.” Sections 5 and 6 amend the Public Health Act (as opposed to Sections 1-4 which amend the Public School Code), so it is unclear whether private schools are mandated to provide emergency medications to students.

OTHER SUBSTANTIVE ISSUES

According to DOH analysis, a 2013 survey by the New Mexico School Nurses Association showed a majority of school nurses (70.8 percent) in the state would have used a stock albuterol inhaler in an emergency situation, and 28 percent would have used an epinephrine auto-injector, if available. Most school nurses (71 percent) reported working in rural schools where it is not uncommon for emergency medical services to take 45 minutes or longer to respond. As of 2011, 10.4 percent of New Mexico’s children have asthma and approximately two students in every classroom have food allergies. Acute anaphylaxis due to allergic reactions occurs in a small number of children annually, however, it is frequently fatal. One-quarter of the severe and potentially life-threatening reactions (anaphylaxis) reported at schools happened in children with no previous allergy diagnosis.

ALTERNATIVES

According to AGO analysis, the Board of Pharmacy could work with DOH, the Medical Board, the Board of Nursing and schools to provide for licensing that would specifically permit schools to establish an emergency medications in schools program. If it is determined that schools must be licensed by the Board of Pharmacy in order to allow albuterol and epinephrine to be stored and administered by schools as part of the emergency medications in schools program, a portion of the \$400,000 appropriation could be earmarked for license fees.