HB

85

REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

MEMORANDUM

DATE: **March 16, 2005**

TO: **Senator Fred Dyson, Chairman**
Senate Health, Educatio and Social Services Committee

FROM: **Representative Kevin Meyer**

RE: **Hearing request for CSHB 85 (JUD) *Prescribed Medication for Students*.**

Please schedule CSHB 85 (JUD) *Prescribed Medication for Students* for a hearing in the Senate Health, Education and Social Services committee at your earliest convenience.

CSHB 85 (JUD) requires schools to allow students' to self-administer medication for asthma and anaphylaxis with certain provisions.

Included in this packet:

- CSHB 85 (JUD) *Prescribed Medication for Students* v. LS-0367\Y
- Sponsor Statement
- Sectional Analysis
- Fiscal Note
- Change Summary
- CSHB 85 (HES) *Prescribed Medication for Students*
- HB 85 *Prescribed Medication for Students*
- Letters of support
    - American Academy of Pediatrics
    - Allergy and Asthma Network
    - Association of Alaska School Boards
    - Alaska Association of School Nurses
    - National Association of School Nurses
- Survey of Alaska School District Policies
- Asthmatic School-children's Treatment and Health Management Act of 2004
- American Journal of Public Health Article

Thank you for your consideration of this request.

Email: Representative_Kevin_Meyer@legis.state.ak.us • **Toll Free:** (866) 465-4945
Session: State Capitol, Juneau, Alaska 99801-1182 • Phone: (907) 465-4945 Fax: (907) 465-3476
Interim: 716 W. 4th Ave., Anchorage, Alaska 99501-2133 • Phone: (907) 269-0199 Fax: (907) 269-0197

REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

Sponsor Statement

CS for House Bill 85

"An Act relating to self-administration and documentation of certain types of medication prescribed to a child attending school."

Of the 20 million Americans with asthma, 6.3 million are children under the age of 18. This chronic condition is the cause of 728,000 emergency room visits, 214,000 hospitalizations and 223 deaths annually among children.

The "Asthmatic School-children's Treatment and Health Management Act" passed by Congress in 2004 directed the Secretary of Health and Human Services to give preference when awarding grants to states that authorize the self-administration of medication to treat students' asthma or anaphylaxis. Over thirty states have passed legislation to comply with the federal act.

House Bill 85 requires that schools permit students to self-administrate medication for asthma, anaphylaxis. A school must permit self-administration if:

- The school receives written authorization from a parent or legal guardian for the self-administration of the medication;
- Written certification from a pupil's health care provider;
- Release of liability for the school and its employees or agents for injury arising from self-administration.
- A treatment plan is filed with the school.
- An agreement to indemnify and hold harmless the school and its employees for claims arising from self-administration.

In return, schools shall provide a written notice to the pupil's parent or guardian of the school's absence of liability related to the self-administration of medication covered by HB 85.

Asthma and allergy related illnesses can be potentially life threatening and the current prohibition on self-administration in schools puts children at risk. HB 85 is an important step toward addressing a major risk to our children's health.

(Updated 3/07/05)

Email: Representative_Kevin_Meyer@legis.state.ak.us • **Toll Free:** (866) 465-4945
Session: State Capitol, Juneau, Alaska 99801-1182 • Phone: (907) 465-4945 Fax: (907) 465-3476
Interim: 716 W. 4th Ave., Anchorage, Alaska 99501-2133 • Phone: (907) 269-0199 Fax: (907) 269-0197

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Mail Stop 3101

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Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM January 24, 2005

SUBJECT: HB 85 (Work Order No. 24-LS0367\G)

TO: Representative Kevin Meyer
Attn: Mike Pawlowski

FROM: Jean M. Mischel
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Requires public elementary and secondary schools to allow the self administration by a student of medications needed to treat asthma, anaphylaxis and other potentially life-threatening illness if certain conditions are met. Imposes annual documentation, indemnification, and release requirements on the parent or guardian of a student who wishes to self-administer medication while at school.

JMM:jad
05-047.jad

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 85(JUD)
(H) Publish Date: 3/9/05

Revision Date/Time (Note if correction):
Dept Affected: Education & Early Development
Title "An Act relating to self-administration and documen-
RDU TLS
tation of certain types of medication prescribed to a child
Component Student & School Achievement
Sponsor Representative Meyer
Requester House HES
Component No. 2796

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous						
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2005) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

Section 14.30.141 states that a school shall permit self-administration of medication by a pupil for asthma, anaphylaxis, or other potentially life-threatening illnesses, under specific conditions and with written authorization and certification. The Department of Education & Early Development identifies no department costs at this time.

Prepared by: Barbara Thompson, Director
Phone 465-8727
Division Teaching & Learning Support
Date/Time 2/22/05 3:35 PM
Approved by: Karen Rehfeld, Deputy Comissioner
Date 02/22/2005
Agency Education & Early Development

(Revised 9/23/2004 OMB)

Calendar No. 784

108TH CONGRESS, 2d Session | SENATE | REPORT 108–394

ASTHMATIC SCHOOLCHILDREN'S TREATMENT AND HEALTH MANAGEMENT ACT OF 2004

OCTOBER 8, 2004.—Ordered to be printed

Mr. GREGG, from the Committee on Health, Education, Labor, and Pensions, submitted the following

REPORT

[To accompany S. 2815]

The Committee on Health, Education, Labor, and Pensions, to which was referred the bill (S. 2815) to give preference regarding States that require schools to allow students to self-administer medication to treat that student's asthma or anaphylaxis, and for other purposes, having considered the same, reports favorably thereon without an amendment and recommends that the bill do pass.

CONTENTS

I. PURPOSE AND NEED FOR LEGISLATION

According to reports of the Centers for Disease Control and Prevention (CDC) and the National Institutes of Health (NIH), of 20 million Americans with asthma, 6.3 million are children under 18 years of age. This chronic condition is the cause of 728,000 emergency room visits, 214,000 hospitalizations and 223 deaths annually among children. It also accounts for 14 million missed schools

days each year. The CDC reports indicate that working parents of children with asthma lose an estimated 1 billion dollars in productivity annually. Unfortunately, the number of persons with asthma has doubled in the United States during the past 15 years.

Consistent with the goals of the Healthy People 2010, the CDC-directed National Asthma Program is based on three public health strategies; (1) tracking, collecting and analyzing data on an ongoing basis to understand the "who, what, and where" of asthma; (2) interventions including translation of scientific information into public health practices to reduce the burden of asthma including school based strategies for children, and (3) partnerships with stakeholders in developing, implementing and evaluating local asthma control programs. The CDC recommends development of asthma friendly school environments designed to help students manage their asthma through a coordinated approach.

The National Asthma Education and Prevention Program, coordinated by the National Heart, Lung and Blood Institute, published a resolution recommending that schools adopt policies for the management of asthma that encourage the active participation of students in the self-management of their condition and allow for the most consistent, active participation in all school activities. In 2002, a committee of experts organized by Rand Corporation for improving childhood asthma outcomes also recommended that the Secretary of the Health and Human Services (HHS) consider giving states incentives to adopt policies that address the needs of children with asthma.

Schools should be a safe place where children learn and play; that should be true for children with asthma also. Thirty-one states have laws protecting the rights of asthmatic children to carry and self-administer metered-dose inhalers. Nineteen states expand this protection to include auto-injectable epinephrine. Furthermore, additional states have pending legislation to allow children to carry their inhalers and anaphylaxis medication at school. Experts, including the NIH and CDC report that self-administration of asthma medication reduces unnecessary emergency room visits, reduces missed school days, promotes participation in school activities and even saves lives. However, many schools do not allow and many states do not require schools to allow students to manage their asthma during school hours. The goal of this legislation is to build on the successful momentum that many states are currently experiencing in implementing comprehensive and effective asthma-related programs in schools.

II. Summary

The bill, as passed by the committee, requires that the Secretary of Health and Human Services, in making any grant to States that is asthma-related, shall give preference to any State with statutory or regulatory provisions described in the proposed bill. The State must require each public elementary and secondary school to grant an authorization for self-administration of asthma medication if the student has demonstrated the skill level necessary to use the asthma medication and any device that is necessary to administer the medication. The State must also require schools to grant an authorization for self- administration of the asthma medication in accordance with a written treatment plan prescribed by the health care

practitioner with documentation from parents. The authorization granted to asthmatic children to possess and use medications must extend to any school sponsored activity such as before-school and after-school activities, and transit to and from school and school-sponsored activities. The plan must be renewed annually and the back up medication, if provided by parents or guardians, must be kept at a student's school in a location easily accessible to the student in event of an emergency.

The grant preferences are to apply to public-health-oriented, asthma-related grants to States generally awarded by the CDC. The bill gives the Secretary the discretion to determine which asthma-related grants to States would receive preference described in the Act. NIH grants to researchers or grants from other agencies to health care institutions for basic and clinical research, new diagnostic and therapeutic innovation, surveillance and epidemiology, and community approaches by health care institutions to achieve reduction in asthma-related morbidity and mortality are not made through States and will not be affected by this bill. The committee does not intend for this legislation to have an adverse funding impact on current grants and continuation funding of those grants solely due to a lack of statutory or regulatory provisions described in this legislation.

The bill includes a rule of construction that states that nothing in the subsection creates a cause of action or in any other way increases or diminishes the liability of any person under the law. The purpose of this rule is to address concerns of school administrators about potential increase in their liability, for example from errors in self-administration of drugs by asthmatic children that may result from the provisions of this bill.

The amendment made by this statute shall apply to grants made on or after the date that is 9 months after the date of the enactment of this Act. This will allow time for any State that currently does not have appropriate statutes or regulations in place to make necessary changes in their statutes. The committee anticipates that 9 months is sufficient time for any State to put in place provisions necessary to meet the conditions of the Act.

The bill expresses the sense of the Senate in commending the CDC for creating strategies for addressing asthma in a coordinated school program and encourages all schools to review the CDC recommendations and adopt the policies that best meet their students' needs.

III. History of Legislation and Votes in Committee

On July 14, 2004, the House Committee on Energy and Commerce, reported favorably a bill (H.R. 2023) to give preferences to states that require schools to allow students to self-administer medication to treat their asthma or anaphylaxis. On September 20, 2004, Senator DeWine (for himself) and Senators Corzine, Durbin and Kennedy introduced S.2815, which is identical to H.R.2023 as passed by the House committee. The committee passed the bill (S.2815) by unanimous consent on September 22, 2004.

IV. Explanation of the Bill and Committee Views

The committee intends to ensure that asthmatic children are able to remain healthy, attend schools and participate in learning and play activities. To achieve these goals, they should be able to take the medications prescribed by their health care providers. Schools should be aware of the management plan prescribed by the child's physician and keep the back-up medication where the child can have access to it in the event of emergency.

The bill, as passed by the committee, will build on the successful momentum that many States are currently experiencing in developing asthma-related programs in schools. Federal asthma-related grants will be awarded by the Secretary to assist these States in continuing to develop effective asthma-related programs in the school system. Preference for those grants will go to States with demonstrated, comprehensive, and effective asthma programs-including provisions regarding self-medication in schools. The committee notes that this legislation does not affect whether States pass laws that require schools to allow self-medication for diseases and health conditions other than asthma and anaphylaxis.

V. Cost Estimate

U.S. Congress,
Congressional Budget Office,
Washington, DC, September 27, 2004.

Hon. Judd Gregg,
Chairman, Committee on Health, Education, Labor and Pensions, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2815, the Asthmatic Schoolchildren's Treatment and Health Management Act of 2004.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Tim Gronniger (for federal costs), and Leo Lex (for the state and local impact).

Sincerely,

Elizabeth Robinson
(For Douglas Holtz-Eakin, Director).

Enclosure.

S. 2815—Asthmatic Schoolchildren's Treatment and Health Management Act of 2004

S. 2815 would modify the Public Health Service Act by directing the Secretary of Health and Human Services, in making any asthma-related grant to a state, to give preference to states that require schools to permit students to self-administer medication for asthma and anaphylaxis.

The bill would not change the purposes for which the Secretary makes asthma-related grants. CBO estimates that enacting S. 2815 would not have a significant effect on the federal budget. Enacting S. 2815 would not affect direct spending or revenues.

S. 2815 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act, but it would alter conditions for the Children's Asthma Treatment Grants Program and other asthma-related grants, giving preferences to

states who allow schoolchildren to self-administer asthma medication. While the bill would not alter the total amount of grants available, the new preference could change the distribution of funds among states.

The CBO staff contacts are Tim Gronniger (for federal costs), and Leo Lex (for the state and local impact. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

VI. Regulatory Impact Statement

The committee has determined that there will be de minimus changes in the regulatory burden imposed by the bill.

VII. Application of Law to the Legislative Branch

Section 102(b)(3) of Public Law 104–1, the Congressional Accountability Act (CAA) requires a description of the application of this bill to the legislative branch. This bill does not amend any act that applies to the legislative branch.

VIII. Section-by-Section Analysis

Section 1. Short title

The short title of the Act is "Asthmatic School Children's Treatment and Health Management Act of 2004".

Section 2. Findings

The Section 2 reviews the findings of the Congress with respect to prevalence of asthma, and the impact of this chronic disease on the use of health care facilities, attendance at schools, and costs. The section reviews the current status of regulation in states and problems encountered by children who attend schools that do not allow self-management of asthma. These problems, in addition to missed school days, include many instances of illness, emergency room visits, hospitalization, and death. The section provides a rationale for the bill.

Section 3. Preference for States that allow students to self-administer medication to treat asthma and anaphylaxis

Section 3991 of the Public Health Service Act (42 U.S.C. 280g) is amended by redesignating subsection (d) as subsection (e) and inserting after the subsection (c) a subsection (d) to include the following.

The Secretary, in awarding any grant under this section or any other grant that is asthma-related (as determined by the Secretary) to a State, shall give preference to any State that satisfies specific criteria. The State must require each public elementary and secondary school to grant an authorization for self-administration of asthma medication in accordance with a written treatment plan prescribed by the health care practitioner with documentation from parents including documents related to liability. The authorization extends to any school sponsored activity such as before-school and after-school activities. The plan must be renewed annually and the back up medication, if provided by parents or guardians, must be kept at a student's school in a location easily accessible to the stu-

dent in event of an emergency. The authorization must be effective only for the same school and the same year for which it is granted and renewed by the parent or guardian each subsequent school year.

The section will be applicable after 9 months from the date of enactment to allow States to pass appropriate legislation.

Section 4. Sense of Congress commending CDC for its strategies for addressing asthma within a coordinated school health programs

The section commends the CDC for identifying and creating strategies for addressing asthma with a coordinated school program for schools to address asthma and encourages all schools to review these policies to meet the needs of their student population.

IX. Changes in Existing Law

In compliance with rule XXVI paragraph 12 of the Standing Rules of the Senate, the following provides a print of the statute or the part or section thereof to be amended or replaced (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

PUBLIC HEALTH SERVICE ACT

* * * * * * *

PART P—ADDITIONAL PROGRAMS

SEC. 399L. CHILDREN'S ASTHMA TREATMENT GRANTS PROGRAM.

(a) AUTHORITY TO MAKE GRANTS.—

(1) IN GENERAL.—* * *

* * * * * * *

(d) PREFERENCE FOR STATES THAT ALLOW STUDENTS TO SELF-ADMINISTER MEDICATION TO TREAT ASTHMA AND ANAPHYLAXIS.—

(1) PREFERENCE.—The Secretary, in awarding any grant under this section or any other grant that is asthma-related (as determined by the Secretary) to a State, shall give preference to any State that satisfies the following:

(A) IN GENERAL.—The State must require that each public elementary school and secondary school in that State will grant to any student in the school an authorization for the self-administration of medication to treat that student's asthma or anaphylaxis, if—

(i) a health care practitioner prescribed the medication for use by the student during school hours and instructed the student in the correct and responsible use of the medication;

(ii) the student has demonstrated to the health care practitioner (or such practitioner's designee) and the school nurse (if available) the skill level necessary to use the medication and any device that is necessary to administer such medication as prescribed;

(iii) the health care practitioner formulates a written treatment plan for managing asthma or anaphylaxis episodes of the student and for medication use by the student during school hours; and

(iv) the student's parent or guardian has completed and submitted to the school any written documentation required by the school, including the treatment plan formulated under clause (iii) and other documents related to liability.

(B) SCOPE.—An authorization granted under subparagraph (A) must allow the student involved to possess and use his or her medication—

(i) while in school;

(ii) while at a school-sponsored activity, such as a sporting event; and

(iii) in transit to or from school or school-sponsored activities.

(C) DURATION OF AUTHORIZATION.—An authorization granted under subparagraph (A)—

(i) must be effective only for the same school and school year fro which it is granted; and

(ii) must be renewed by the parent or guardian each subsequent school year in accordance with this subsection.

(D) BACKUP MEDICATION.—The State must require that backup medication, if provided by a student's parent or guardian, be kept at a student's school in a location to which the student has immediate access in the event of an asthma or anaphylaxis emergency.

(E) MAINTENANCE OF INFORMATION.—The State must require that information described in clauses (iii) and (iv) of subparagraph (A) be kept on file at the student's school in a location easily accessible in the event of an asthma or anaphylaxis emergency.

(2) RULE OF CONSTRUCTION.—Nothing in this subsection creates a cause of action or in any other way increases or diminishes the liability of any person under any other law.

(3) DEFINITIONS.—For purposes of this subsection:

(A) ELEMENTARY SCHOOL AND SECONDARY SCHOOL.—The terms 'elementary school' and 'secondary school' have the meanings given to those terms in section 9101 of the Elementary and Secondary Education Act of 1965.

(B) HEALTH CARE PRACTITIONER.—The term 'health care practitioner' means a person authorized under law to prescribe drugs subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act.

(C) MEDICATION.—The term 'medication' means a drug as that term is defined in section 201 of the Federal Food, Drug, and Cosmetic Act and includes inhaled bronchodilators and auto-injectable epinephrine.

(D) SELF-ADMINISTRATION.—The term 'self-administration' means a student's discretionary use of his or her prescribed asthma or anaphylaxis medication, pursuant to a

prescription or written direction from a health care practitioner.

* * * * * * *

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and willingness to treat potential victims of bioterror. *Health Aff*. 2003; 22(5):189–197.

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Asthma Inhalers in Schools: Rights of Students with Asthma to a Free Appropriate Education

Sherry Everett Jones, PhD, JD, MPH, and Lani Wheeler, MD

Students who possess and self-administer their asthma medications can prevent or reduce the severity of asthma episodes. In many states, laws or policies allow students to possess and self-administer asthma medications at school.

In the absence of a state or local law or policy allowing public school students to possess inhalers and self-medicate to treat asthma, 3 federal statutes may require public schools to permit the carrying of such medications by students: the Individuals With Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act. Local policies and procedures can be based on these federal laws to ensure that students with asthma can take their medicines as needed. (*Am J Public Health*. 2004;94:1102–1108)

MORE THAN 6 MILLION AMERICAN children aged younger than 18 years have asthma, making it one of the most common chronic diseases among children.[1] In 2001, more than 4 million children younger than 18 years had an asthma episode in the previous year (a rate of 57/1000), suggesting that many young people with asthma may not have their asthma under control.[1] As many as an estimated 1.4% of all American children experience some level of limitation owing to asthma, such as an inability (or limited ability) to engage in school or play activities.[2] Young people with asthma miss an estimated

14 million days of school each year because of the disease,[1] and some children's school performance consequently suffers.[4]

Provided parents or guardians and a health care provider, preferably with input from the child's school and especially the school nurse, deem it appropriate for a student to self-medicate and have granted authorization, it is beneficial to students with asthma to have unobstructed access to their medication before, during, and after school.[5,6] Students who self-administer their asthma medications can prevent or reduce the severity of asthma episodes.[7] However, some schools perhaps as part of a drug use prevention program or in hopes of minimizing liability claims, do not allow students to carry their inhalers in school.[8,9] In 2000, students were allowed to self-medicate with prescription inhalers in 68% of all schools nationwide (79% of middle/junior and senior high schools).[10]

Restrictions on students carrying their inhalers may preclude the immediate use of medication at the onset of symptoms. For example, the room in which the medication is kept may be too far from the student's classroom or playing field, some students may believe it is too disruptive to go to another part of the school building to take their medication,[11] and many students are embarrassed about needing to take medications.[12] Restrictions on the use of inhalers may ultimately compromise medication adherence, increase the risk of a full-blown asthma episode, and cause unnecessary suffering, emergency treatment, and asthma-related school absences.[2,8,13]

In 2000, approximately 223 children aged 0 through 17 years died as a result of asthma (a rate of 0.3/100 000).[1] Furthermore, asthma results in substantial increased use of the health care system. In 2000, children aged 0 through 17 years had an estimated 4.6 million asthma-related outpatient visits to doctors' offices and hospital outpatient departments (a rate of 649/10 000), approximately 728 000 asthma-related emergency department visits (a rate of 104/10 000), and approximately 21 000 asthma-related hospitalizations (a rate of 30/10 000).[1] Asthma-related missed school days among children aged 5 through 17 years resulted in an estimated cost of $726.1 million in caretakers' time lost from work.[14]

By knowing the rights of students with asthma, school administrators, educators, physicians, and other health care providers can help ensure that students have appropriate access to medications. This article explores state laws and policies that allow students to carry and self-administer asthma inhalers in school and federal statutes that may, under certain circumstances, require schools to allow students to do so.

STATE LAWS AND POLICIES ALLOWING INHALERS

As of April 2004, 38 states allow self-medication among students at school. Twenty-three states (Alabama,[15] Delaware,[16] Florida,[17] Georgia,[18] Illinois,[19] Kentucky,[20] Maine,[21] Massachusetts,[22] Michigan,[23] Minnesota,[24] Mississippi,[25] Missouri,[26] New Hampshire,[27] New Jersey,[28] New York,[29] Ohio,[30] Oklahoma,[31] Rhode Island,[32] Tennessee,[33] Texas,[34] Utah,[35] Virginia,[36] and Wisconsin[37]) have enacted legislation specifically to allow students with asthma to possess and self-administer inhaled asthma medications while at school. These laws require parental consent and permission from a physician or other health care provider. Also, the School Health Policies and Programs Study 2000 found that an additional 10 states (Kansas, Louisiana, Maryland, Nebraska, New Mexico, North Dakota, South Carolina, South Dakota, Vermont, and Washington) have adopted policies allowing students to self-medicate at school with prescription inhalers.[38] Five other states (California,[39] Connecticut,[40] Indiana,[41] Iowa,[42] and Oregon[43]) have laws broadly providing for the self-administration of medications. Because state laws are often changing, interested readers can access the National Conference of State Legislatures Web site to monitor legislative action related to asthma, including self-medication laws (http://www.ncsl.org/programs/esnr/asthmamain.htm).

ASTHMA AS A DISABILITY: FEDERAL STATUTES

In the absence of a state or local law or policy allowing students to possess inhalers and self-medicate, health care providers and parents might be able to use 1 of 3 federal statutes that, under certain circumstances, will provide the legal justification requiring schools to allow students with asthma to do so. Those laws are the Individuals With Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 (Section 504), and Title II of the Americans With Disabilities Act (Title II of ADA).

INDIVIDUALS WITH DISABILITIES EDUCATION ACT

The purpose of IDEA is to partially fund states to develop special education programs "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living."[44]

IDEA applies only to children who meet the definition of a *child with a disability*, that is, a child with "mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (hereinafter referred to as emotional disturbance), orthopedic impairments, autism, traumatic brain injury, *other health impairments*, or specific learning disabilities; and who, by reason thereof, needs special education and related services" (italic added).[45]

The implementing regulations further define *other health impairment* as "having limited strength, vitality or alertness, in-

cluding a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that—(i) *Is due to chronic or acute health problems such as asthma* . . . and (ii) Adversely affects a child's educational performance (italic added)."[46]

To be classified as disabled under IDEA, a child with asthma must fall under the *other health impairment* category and require special education because of the asthma or have some other disabling condition under IDEA and require special education because of that disability. In either case, modifications must be made for that student that are determined necessary by the child's individual education program team and allow the student to receive a "free appropriate public education" (defined as education and related services provided at the public's expense, which meet the standards of the state educational agency, include an appropriate preschool, elementary, or secondary school education in the state involved, and are consistent with the student's individual education plan[47]), including "related services" designed to meet the child's unique needs.[44,46,50] Such related services might include allowing a student to carry an asthma inhaler.

SECTION 504 OF THE REHABILITATION ACT OF 1973

The purpose of Section 504 is to eliminate discrimination on the basis of a disability: "No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . ."[51] Under this law, *disability* is more broadly defined than under IDEA and, consequently, covers a large number of youths with disabilities who attend federally funded programs not covered under IDEA. The federal regulations promulgated under Section 504 define a disabled person as one who "(i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment."[52] The term *physical impairment* encompasses respiratory disorders or conditions. *Major life activities* refers to functions such as caring for oneself, breathing, and learning.[52] Section 504 is broader than IDEA because it applies to not only the education program, but also to other nonacademic and extracurricular activities.[53,54]

As with IDEA, the regulations promulgated under Section 504 require school districts to provide a "free appropriate public education" to children with disabilities.[55] In the context of Section 504, this requirement means that "the provision of regular or special education and related aids and services . . . designed to meet individual educational needs of handicapped persons [must be as adequate as those designed to meet] the needs of nonhandicapped persons . . ."[56] Of note, some case law is in conflict with the Section 504 regulations requiring a free appropriate education. Some courts, including the US Supreme Court, have held that Section 504 "does not impose an obligation . . . a free appropriate public education despite federal regulations to the contrary."[57] What this conflict means for future lawsuits is unclear. In accordance with the language of Section 504, courts consistently hold, however, that Section 504 requires that schools make reasonable accommodations to allow disabled students to gain equal access to educational opportunities provided at that school.[57]

TITLE II OF THE AMERICANS WITH DISABILITIES ACT

ADA extends Section 504 to public accommodations in the private sector and state and local public agencies that do not receive federal funding (the discussion of which is beyond the scope of this article).[58] In the context of disabled students attending public schools, Section 504 and Title II of ADA are similar. Title II of ADA prohibits any public entity (e.g., public schools) from discriminating on the basis of a disability.[59,60] Congress intended Title II of ADA and its implementing regulations to be consistent with Section 504,[54,61–63] although the federal regulations and the US Department of Education, Office for Civil Rights have interpreted Section 504 more broadly than Title II of ADA.[57] Under both Section 504 and Title II of ADA, recipients of federal funds and public entities must address the disability-related needs of disabled students so they can participate in services or programs to the extent necessary to avoid discrimination.[64] The definition of *disability* under Title II of ADA is identical to that of Section 504. Under the regulations of Title II of ADA, a school must "make reasonable modifications in policies."[54] A school that refuses to administer medication because of a student's disability would be in violation of Title II of ADA.[48]

HOW THESE FEDERAL STATUTES HAVE BEEN APPLIED

A clear demarcation indicating at what point a child's asthma rises to the level of a disabling condition is not available. Presumably, when a child's asthma significantly interferes with breathing, the child would be considered to have a disability.[58] Parents and the child's health care provider, along with teachers, the school nurse, and other school officials, are in the best position to evaluate the effect a child's asthma has on a child's health and academic performance. Gelfman and Schwab recommend that health professionals document the following: "(1) how the disability interferes with 1 or more life functions [e.g., breathing, learning], (2) how the disability affects the student's functioning (e.g., energy level, exercise needs, medication effects, etc); and (3) what individualized

supports or accommodations in school the student requires in order to access an appropriate education."[58(p337)]

When a child's asthma is disabling to the extent that the child needs "special education and related services,"[45,46] under IDEA a school is obligated to offer that student sufficient specialized services (e.g., allowing a student to carry an asthma inhaler) so that the student may benefit from his or her education.[50(p4)] During 2000–2001, the US Department of Education estimated that 292 000 children aged 3 to 21 years were served under IDEA as a result of a disability categorized as "other health impairment."[65] The US Supreme Court, in *Cedar Rapids Community School District v Garret F.* established that under IDEA, those services may go as far as providing a full-time, one-on-one nurse or health assistant.[66] If a student has no other disability and the student's asthma does not affect his or her educational performance, IDEA does not apply.[67] However, students who need access to an asthma inhaler because their asthma places a substantial limitation on major life activities (i.e., the child is disabled because of his or her medical condition) but do not need special education remain qualified under Section 504 and Title II of ADA[68,69] and may avoid being labeled as children who need special education.

To succeed in a Section 504 or Title II of ADA claim alleging that an accommodation was not granted, the claimant must show that the accommodation was denied because of the student's disability (i.e., was discriminatory).[54,70,71] In *East Helena (MT) Elementary School District # 9*, the school district refused to either administer or ensure that the student took asthma medication prescribed and filled by a naturopathic physician.[70] Instead, the school offered to allow a family member to administer the child's medication. In refusing to administer the medication, the school district was following a state law that prohibited the administration of medication unless the prescription was filled by a pharmacist. In that case, the court upheld the policy because the refusal applied to all students regardless of disability status.

Similarly, in *DeBord v Board of Education of the Ferguson-Florissant School District*[54] and *Davis v Francis Howell School District*,[71] schools refused to administer a prescription medication (methylphenidate [Ritalin] for attention deficit hyperactivity disorder) because the doses exceeded that recommended by the *Physicians' Desk Reference*. Both school districts had policies prohibiting schools from administering such prescriptions, although both were willing to let a parent or designee come to the school to administer the medication. The schools argued that the policies were to protect students' health and minimize potential liability. Courts in both cases found that because the school policies were neutral and applied to all students regardless of disability status, no discrimination had taken place. *DeBord*, *Davis*, *and East Helena* are examples of situations in which the claimant could not show that the school district's refusal to accommodate the child was based solely on a disability; therefore, no violations of Section 504 or Title II of ADA were found.[54,70,71]

Although some school policies that forbid staff to administer medications to students have been upheld by courts if uniformly applied, it is unlikely that a "no medications" policy (i.e., a policy that denies the administration of any and all medications at school) applied to all students would stand up in court because those policies have the effect of denying children with disabilities the free appropriate public education to which they are entitled under IDEA and perhaps Section 504, or reasonable accommodations under Section 504 and Title II of ADA.[57,72,73] A free appropriate public education must be specifically designed to meet the unique needs of the child,[74] and consequently, related services, including medications, must accompany that design.[53,56,60] Likewise, under Section 504, health services provided as part of related services must be individually evaluated and prescribed.[58]

INDIVIDUAL EDUCATION PROGRAMS

Under IDEA, a "child with a disability" must be provided with an appropriate individualized educational program (IEP).[49,75] Federal regulations promulgated under Section 504 indicate that schools may use IEPs or other plans as a means of meeting free appropriate public education requirements included in those regulations[55] (whether Section 504 includes such requirements is less clear[57]). An IEP is a written statement designed to identify a child's educational needs and other programs and related services the child requires to progress in the general curriculum.[49] IEPs are developed by an IEP team that typically includes the disabled child's parents, regular and special education teachers, and other representatives from the local education agency who are best suited to assist the child in meeting his or her educational needs.[49] A school nurse may be part of the IEP team when school health services (e.g., administration of medications) are necessary.[76] This team, created specifically for each individual child, ensures that all aspects of the child's educational and related services needs are tailored to that child. This team, along with consultation from the child's health care provider, is best equipped to determine on a case-by-case basis whether self-medication using asthma inhalers is appropriate.

For students with asthma, an *asthma management plan* (Table 1) is an appropriate part of an IEP.[5] Health care providers give instructions on how best to manage the child's asthma during the school day. For a student with asthma, it is helpful if part of the IEP (or 504 plan or individual health service plan or asthma management plan) includes specific information about where, when, and how each asthma medication is to be taken, including when medication possession

TABLE 1—Elements of Typical Asthma Management Plan

- Student's asthma history
- Student's asthma symptoms
- How to contact student's health care provider and parent or guardian
- Signatures of physician and parent or guardian permitting use of medications in school
- List of factors that make student's asthma worse
- Student's best peak flow reading (if student uses peak flow monitoring)
- List of student's asthma medications
- Student's treatment plan, including actions school personnel can take to help handle asthma episodes

Source. NIH Publication 95-3651.[5]

American Academy of Pediatrics

DEDICATED TO THE HEALTH OF ALL CHILDREN™

Alaska Chapter

Chapter President
Thomas J Porter, MD, FAAP
3800 Matthews Drive
Anchorage, AK 99515
907/345-6911

Chapter Vice-President
Jadyne Blum, MD, FAAP
3940 Providence Drive, Suite 465
Anchorage, AK 99508-4666
907/562-3425
Fax: 907/562-1170
E-mail: gjody@alaska.net

Chapter Secretary-Treasurer
Ruth A Bisel, MD, PhD, FAAP
4365 Rendezvous Circle
Anchorage, AK 99504
907/729-3278
Fax: 907/729-3285
E-mail: RBTZBL@EARTHLINK.NET

Chapter Executive Director
Janice T Towell
7645 Griffin Street
Anchorage, AK 99507
907/346-6028
Fax: 907/346-6028
E-mail: jtowell@alaska.com

January 13, 2005

Dear sir or madam:

The Alaska Chapter of the American Academy of Pediatrics wishes to provide support to the Alaska Asthma Coalition's efforts to encourage Alaska legislation this year allowing elementary and secondary school students to self administer medication for asthma or anaphylaxis under specified conditions.

The ability for students to use safe and effective medication for these conditions in school, as they do out of school, has been a recommendation for years of the American Academy of Pediatrics (Committee on School Health, Guidelines for the Administration of Medication in School, *Pediatrics;* 112 (3): 697-699, September, 2003) and the American Academy of Allergy, Asthma, and Immunology (Policy Statement, Anaphylaxis in schools and other child-care settings, *Journal of Allergy and Clinical Immunology;* 102 (2): 173-176, August, 1998). Now with financial encouragement of the federal government through the Asthmatic Schoolchildren's Treatment and Health Management Act of 2004, which provides preference for certain grants to states with this legislation, the time has come in Alaska for action. Furthermore 35 states already have these laws in place.

Warm regards,

Thomas J. Porter, MD, FAAP
President
American Academy of Pediatrics, Alaska Chapter

Allergy & Asthma Network
Mothers of Asthmatics

February 1, 2005

The Honorable Kevin Meyer
Alaska House of Representatives
State Capitol, Room 515
Juneau, AK 99801

Dear Representative Meyer:

Founded in 1985, Allergy & Asthma Network Mothers of Asthmatics (AANMA) strives to eliminate suffering and death due to asthma and allergies through education, advocacy, community outreach, and research. For the last decade, the organization assisted state and federal lawmakers to secure students' rights to carry and self-administer prescribed lifesaving asthma and anaphylaxis medications while at school and school-sponsored activities. Today, we thank you for your leadership in sponsoring HB 85, potentially lifesaving legislation for Alaska students living with asthma and anaphylaxis.

Breathing is a right, not a privilege. Physicians prescribe lifesaving medications to patients, and with parental support, train students how to use these medications in a life-threatening emergency. However, not all schools protect students' rights to carry and self-administer emergency medications. Tragically, inconsistent school policies have led to student deaths across the country. In many cases, it has taken a student's death and subsequent lawsuit to prompt statewide legislation protecting students' rights.

On October 30, 2004, President signed HR 2023, the Asthmatic Schoolchildren's Treatment and Health Management Act of 2004, into law. States with laws protecting students will receive asthma-related funding preference from the federal government.

Bill HB 85 will qualify the state for this preference, create a uniform self-administration policy for all Alaska schools, and enable students to focus on learning. Alaska will join the nearly 20 states currently protecting these vital student rights. We commend you for your leadership and support of Alaska students living with asthma and anaphylaxis.

On behalf of students who just want to breathe, thank you!

With warm regards,

Marissa Magnetti
Advocacy Network Coordinator

Sandra Fusco-Walker
Patient Advocate

School Boards United

The 52 member districts of the [redacted] met in district forums during the AASB Legislative Fly-In on February 13, 2005 and considered the following bills pending before the Alaska Legislature:

Bill/Topic	REAA/Rural Districts	Municipalities	Large Districts
Education Funding HB 1 - Base Student Allocation increase	$4,995 minimum level in FY06, but not adequate	$4,995 minimum, but not adequate	$4,995 minimum, but not adequate
PERS/TRS funding (inside foundation)	Support	Support	Support
Early Funding HB 20, SB 13, SB 23	Support, but need option of supplemental	Support March 15, but need option of supplemental	Support, but need option of supplemental
Limit administrative expenses SB 57	Oppose	Oppose	Oppose
School Construction Debt HB 13	Support	Support	Support
School Safety HB 41 Min. 60 days for assault	Support	Support	Support
HB 88, SB 65 Waive minors into adult court	Monitor	Support	Monitor
SB 10 Remove cap on damage awards for vandalism	Monitor	Support	Support
Student Health HB 3 - Scoliosis tests	Oppose	Oppose	Oppose
HB 85 Self-administer drugs	Support	Support	Support
SB4 SB 35 First aid classes	Oppose	Oppose	Oppose
SB 48 Psychotropic Drugs	Oppose	Oppose	Oppose
HB 128 Physical fitness task force	Monitor	Monitor	Oppose
Teacher Recruitment SB 24, SB 31, SB 61	Support	Support	Support

Talking Points on Education Bills

Education Funding HB 1	$4,995 minimum needed to provide education mandated by NCLB and higher costs Continue the positive investment trend line established in 2004 Districts already hurting from years of under-funding Many districts already at local funding cap Federal education cuts and under-funding will impact schools
PERS/TRS funding	Appreciate governor's initiative to fund at 100 percent; keep inside formula
Early Funding HB 20, SB 13, SB 23	Good idea to help district planning, but when revenues are available late in session, education should be at the table
Limit Administrative Expenses SB 57	30 percent ceiling is already unrealistic; 32 districts secured waivers this year
School Construction Debt HB 13	Districts have identified $580 million in construction needs; governor requesting only $30 million in FY 06 school repairs
School Safety HB 41, HB 88, HB 65, SB 10	School employees must be protected and our schools must be safe from violent acts. But legislature should be careful about removing discretion from the hands of school officials and the courts.
Student Health HB 85, HB 3, SB 4, SB 35, SB 48, HB 128	Districts are skittish about more unfunded mandates from the state and federal government. It makes sense to allow students to carry and self-administer allergy and asthma drugs (HB 85). We will monitor other bills as they move through the process.
Teacher Recruitment SB 24, SB 31, SB 61	Retire-rehire law has helped many districts cope with personnel emergencies & teacher shortages. Cost to the retirement program has been minimal. It's a local option that should be extended.

AaNA Alaska Nurses Association

t/ 907-274-0827
f/ 907-272-0292

2207 East Tudor Rd, Suite 34
Anchorage, AK 99507-1069
www.aknurse.org
aknurse@aknurse.org

Testimony of Patricia Senner MS, RN, ANP
Chair Legislative Committee
Alaska Nurses Association
HB 85
February 15, 2005

The Alaska Nurses Association would like to express their support of HB 85, "an Act relating to self-administration and documentation of certain types of medication prescribed to a child attending school"

The Nurses Association emailed a copy of this Bill to nurses throughout the state. The responses we received back were all supportive of the legislation

This legislation mandates a practice that has already been in place in the Anchorage School District, so there has been practical experience with implementation of the Bill's mandates. The school nurses we consulted on both the elementary and high school level stated that they had not encountered any serious problems with student's carrying their own medication.

We did receive numerous comments that some student's, with more serious disease, should be required to also have an inhaler left with the school nurse. As you might imagine, student's frequently forget to bring their inhalers to school, or the inhalers run out of medication and the student forgets to tell their parents. There must be some corollary to Murphy's law that when the student forgets their inhaler is when they need it most.

It might be advisable that a section be added to the bill that would allow the school district to require a student to provide a back-up inhaler to be left in the office. Most school's already have back up epi pens on hand because they can never tell which student might have an anaphylactic reaction to something in the environment.

Thank you for this opportunity to respond to this bill.

National Association of School Nurses

POSITION STATEMENT

Epinephrine Use in Life-Threatening Emergencies

HISTORY:

An increasing number of students and school staff have life-threatening allergies. Exposure to the affecting allergen can trigger anaphylaxis. Anaphylaxis requires prompt medical intervention with an injection of epinephrine.

DESCRIPTION OF ISSUE:

Avoidance, early recognition, and prompt treatment are essential to the management of life-threatening allergies. There are students and school staff who have known life-threatening allergies, as well as those who have not been identified. Prompt intervention with epinephrine is vital to saving lives.

RATIONALE:

Medication and emergency policies in school districts must be developed with the safety of all students and staff in mind. Easy access to and correct use of epinephrine are necessary to avoid life-threatening complications.

CONCLUSION:

It is the position of the National Association of School Nurses that school nurses supervise the management and treatment of life-threatening allergies. The self-managed administration of epinephrine should be evaluated on a case-by-case basis by the school nurse, the parent, the health care provider, and the student. Written permission from the parent and health care provider must be obtained for students with known life-threatening allergies who will self-medicate.

An individual health care plan that includes continuous monitoring, emergency plans, and evaluation should be written by the school nurse and maintained for every student with prescribed epinephrine. The school nurse should provide training for school staff in the recognition of life-threatening allergic reactions and, if appropriate, in the administration of pre-filled, single dose epinephrine prescribed for these students.

School districts must establish direction for handling episodes of anaphylaxis in students and staff with no previous history of life-threatening allergies. State laws

pertaining to nursing practice will impact the need for protocols or standing orders.

References/Resources:

Gold, M.S. and Sainsburg, R. "First Aid Anaphylaxis Management in Children Who Were Prescribed an Epinephrine Autoinjection Device (Epi-Pen)", Journal of Allergy and Clinical Immunology, July 2000: 106(1 Pt. 1): 171-6, Cit IDS PM1D: 10887321 UI: 20347070.

Weller, John, "Anaphylaxis in the General Population: A Frequent and Occasionally Fatal Disorder That is Under Recognized", Journal of Allergy and Clinical Immunology, August 1999, part 1, vol. 104, No. 2, p271-273.

Dibs, S. D. and Baker, M.D., "Anaphylaxis in Children: A Five Year Experience", Pediatrics 1997, 99.e7.

Masoud, Froudi, Alshedri, Mohammed, Hummel, David, and Chaim M. Raifmon. "Anaphylaxis and Epinephrine Auto-Injector Training: Who Will Teach the Teachers?" Journal of Allergy and Clinical Immunology, July 1999, vol. 104, No. 1, p. 190-193.

American Academy of Allergy, Asthma, and Immunology, 611 East Wells Street, Milwaukee, WI 53202

Asthma and Allergy Foundation of America (AAFA), 1233 20th Street, NW, Suite 402, Washington, DC 20036.

www.SchoolAsthma.com

Adopted: November, 2000

National Association of School Nurses

1416 Park Street, Suite A
Castle Rock, CO 80109
303-663-2329
303-663-0403 Fax
Toll Free: 866-627-6767

POSITION STATEMENT

The Use of Asthma Inhalers in the School Setting

HISTORY:

The number of diagnosed cases of asthma is increasing each year. Inhaled Medication is frequently used to manage the condition and treat acute exacerbation.

DESCRIPTION OF ISSUE:

Early recognition and prompt treatment of symptoms are vital to the management of asthma.

RATIONALE:

School district medication policies must be developed with the safety of all students in mind. Easy access to and correct use of asthma inhalers are necessary to avoid serious respiratory complications secondary to acute exacerbation and to improve the quality of life of students with asthma.

CONCLUSION:

It is the position of the National Association of School Nurses to support the self-management of asthma, including the use of prescribed, inhaled medications on a case-by-case basis with parent, physician, school nurse, and if appropriate, student involvement. Self-managed administration of inhaled medication for asthma must be evaluated by the school nurse. Written permission from the parent and physician must be obtained. A written individual health care plan that includes continuous monitoring and evaluation by the school nurse must be maintained for every student who self-administers prescribed inhaled medications.

Adopted: June 1993
Revised: June 1999

Medication Survey

A survey of Alaska school districts shows no consistent policy in allowing students to carry and administer their own medication for asthma and anaphylactic episodes. And while 14 districts indicated support for such a policy allowing self-administration of medication, nine districts expressed opposition.

The survey by AASB was conducted following introduction of House Bill 85 requiring public schools to permit students to administer their own medication for asthma, anaphylaxis (allergic reactions to food or insect bites) and other potentially life-threatening illnesses. Sponsored by Rep. Kevin Meyer, R-Anchorage, the bill requires written authorization from a parent or guardian and a health care provider.

Ten districts that responded to the survey said they currently allow students to carry and use asthma inhalers and/or an auto-injector syringe. Several require parental or physician permission.

Eleven districts reported requiring students to keep any such device in the custody of a school nurse or other trained staff member. Two districts allow inhalers but not syringes, while three allow auto-injectors but not inhalers.

When asked if they would support a measure such as HB 85, nine districts indicated no. One district said they were currently in a dispute with parents demanding that staff administer insulin to their child

Among the 14 districts that indicated support for the bill, one district said it would welcome any law absolving their schools of liability for students treating themselves.

"The inhaler is much easier to administer, and all but the very youngest of students know how to use them and they keep them at their desks or in accessible lockers," the district reported.

HB 85 was referred for the Health, Education and Social Services Committee and the Judiciary Committee.

ASSOCIATION OF ALASKA SCHOOL BOARDS
Advocates for Alaska's Kids

Quick Survey on Self-administration of Medications

DUE DATE: 02/08/05

Legislation (House Bill 85) has been introduced to require public schools to allow students to self-administer medication for the treatment of asthma, anaphylaxis (allergic reactions to insect bites or food) and other potentially life-threatening illnesses. The bill contains various requirements for written authorization from parents and health-care professionals, as well as assurances that schools will not be held liable for any misuse of the medication.

In preparation for public hearings on the bill, AASB is taking a quick survey to answer the following questions:

1. Is it your district policy for students who carry an asthma inhaler or auto-injector syringe to turn those devices into the school office or nursing station?

   Asthma Inhaler Yes_____ No_____

   Auto-injector Syringe Yes_____ No_____

2. If yes to either, who is authorized to dispense such medication?

   School nurse_____ Office aide_____
   Secretary_____ Classroom teacher_____
   Site administrator_____ Other_____

3. Has your district had any recent incidences in which a student had a severe asthma attack or anaphylactic episode? Can you describe the circumstances briefly? _____
   _____
   _____

4. Would your district support a change in state law that allows students to carry and self-administer medication with an asthma inhaler or self-injector syringe?

   Yes_____ No_____

1111 West 9th Street, Juneau, AK 99801
☎(907) 586-1083 🖷(907) 586-2995 ✉aasb@aasb.org 🏠 http://www.aasb.org

	Question #1		Question #2					
District	Asthma Inhaler	Auto-Injector Syringe	School Nurse	Secretary	Site Administrator	Office Aide	Classroom Teacher	Other
Aleutians East	N	N						
Anchorage	Y-If parent completes permission required	Y-If parent completes permission required	X-Trained annually	X-Trained annually	X-Trained annually	X-Trained annually	X-Trained annually	X-Trained annually
Bering Strait	N	Y						X
Cordova	Y	Y		X	X		X	
Delta/Greely	Y	Y		X				
Denali Borough	Y	Y	X				X	
Dillingham City	Y	Y		X				
Fairbanks	Y-Some HS students may carry their own inhaler	Y-No exceptions	X-Each school nurse trains an alternate (usually the secretary).	X	X			
Galena	N	Y		X			X	
Haines Borough	N	N						
Hydaburg City	N	N						
Iditarod Area	N	N						
Juneau Borough	Y-Elementary	Determined case by case	X					
Kake City	N	N						
Kenai Peninsula	N	Y	X					Trained Staff
Klawock City	Y	Y		X				
Kodiak Island	N- Form must be filled out by parent & doctor if student carries this	Y	X		X			
Kuspuk	N	N						
Lake & Peninsula	Y	Y			X			
Mat-Su Borough	Y	Y	X	X	X	X	X	
Nome City	N	N						
Northwest Arctic	Y	Y			X			
Pribilof	N	N		X				
Sitka Borough	Y	N	X	X	X			
Skagway City	N	N						
Southeast Island	Y	N		X	X			
Southwest Region	Y	Y		X	X			
Tanana	Y	Y		X	X		X	

	Question #1		Question #2					
District	Asthma Inhaler	Auto-Injector Syringe	School Nurse	Secretary	Site Administrator	Office Aide	Classroom Teacher	Other
Unalaska City	N	N						
Valdez City	Y-Items are kept in the office and students come to the office to take their medication	Y-Items are kept in the office and students come to the office to take their medication						Y- Student self medicates in the presence of school office staff or principal.
Wrangell City	Y	Y		X	X			
Yupiit	Y	Y		X	X			
Totals: 32	14 No, 17 Yes, 1 No/Yes	12 No, 18 Yes, 1 No/Yes, 1 Case by Case	8	15	13	2	6	4

	Question #3			Question #4		
District	Yes	No	Description of asthma attack or anaphylactic episodes	Yes	No	N/A Uncertain
Aleutians East		X		X		
Anchorage	X		[illegible] school district wherein asthma-find no inhaler-paramedics gave meds; student recovered	X		
Bering Strait		X				X
Cordova		X			X	
Delta/Greely		X		X		
Denali Borough		X			X	
Dillingham City		X			X	
Fairbanks	X		An elementary student with asthma used an inhaler but was not getting relief, the child was transported to the hospital. Our district is supplying all schools with pulse-oximeters for the nurse's use.	X-See comment		
Galena		X			X	
Haines Borough				X		
Hydaburg City		X		X		
Iditarod Area		X			X	
Juneau Borough	X		Student did not responds to inhaler. Parent was called and transported student to doctor.		X	
Kake City		X				X
Kenai Peninsula	X		Asthma attacks are not uncommon in our district		X	
Klawock City		X		X		
Kodiak Island		X		X- Needs to address age-appropriateness		
Kuspuk		X		X		
Lake & Peninsula		X		X		
Mat-Su Borough	X		One on the playground, and one on the bus			X
Nome City	X		left their device at home. The parent was contacted and			
Northwest Arctic		X		X		
Pribilof		X		X		
Sitka Borough		X			X- syringe	
Skagway City		X		X		
Southeast Island		X		X		
Southwest Region		X			X	
Tanana		X			X	

	Question #3				Question #4		
District	Yes	No	Description of asthma attack or anaphylactic episodes		Yes	No	N/A Uncertain
Unalaska City		X			X		
Valdez City	X		Students have had attacks, but they have been able to come to the office to take their medication.		X- Soc comment		
Wrangell City		X				X	
Yupiit		X					X- Needs to be based on individual needs
Totals: 32	7	24			16	11	4

Changes to HB 85 in CS HB 85 version 24-LS 0367\Y

HB 85

1.) Page 2, line 19:
"shall be permitted to carry an inhaler.."

2.) Page 2, line 20—26: *underlined deleted*
"times as long as the pupil does not endanger any person through the misuse of the inhaler. Misuse of an inhaler includes exceeding the prescribed dosage of the medication. An inhaler includes metered-dose, breath-activated, and dry powder inhalers, and spacers and holding chambers. (d) The school may confiscate a self-administered medication if a pupil misuses the medication."

3.) To page 2, line 27-28: *replaced*
"advanced nurse practitioner.....public health nurse."

4.) Not included in HB85

CSHB 85

1.) To page 2, line 19: *inserted*
"shall be permitted to carry **and store with the school nurse** an inhaler..."

2.) Page 2, lines 20-24: *replaced with*
"times. (d) If a student uses the student's prescribed medication in a manner other than as prescribed, disciplinary action according to school codes may be imposed upon the student. The imposed disciplinary action may not limit or restrict the student's immediate access to the student's prescribed medication."

3.) Page 2, lines 25-26: *replaced with*
"licensed nurse"

4.) Page 2, lines 26: *added*
"pharmacist"

Prepared by Representative Meyer's Office

Changes to HB 85 in CS HB 85 version 24-LS 0367\F

HB 85	CSHB 85
1.) Page 1, line 8 - ",or other potentially life-threatening illness.."	1.) Page 1, line 8 - Deleted - ", or other potentially life threatening illness."
2.) Page 2, line 3 - "is able to self-administer the medication safely."	2.) Page 2, lines 2-4 - Added - "has demonstrated to the health care provider the skill level necessary to administer the medication as prescribed."
3.) Not included in HB 85	3.) Page 2, lines 10-12 - Added: "(5) a written treatment plan for the pupil for managing asthma or anaphylaxis episodes and a list and dosage of medication needed during school hours that is signed by the pupil's health care provider; and"
4.) Not included in HB85	4.) Page 2, lines 13-14 - Added: "(6) any other documentation required by the school that is consistent with this section."

Prepared by Representative Meyer's Office

SENATE COMMITTEE REPORT

DATE: 3/16/05

FURTHER: Judiciary

DATE TURNED IN TO OFFICE: 4.4.05

Health, Education and Social Services Committee considered CS FOR HOUSE BILL NO. 85(JUD)

HB 85 PRESCRIBED MEDICATION FOR STUDENTS

"An Act relating to self-administration and documentation of certain types of medication prescribed to a child attending school."

and recommends:

[ ] be **replaced** with _____ **CS** _____ (_____)

[ ] adopt **previous** _____ **CS** _____ (_____)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by _____ _____ Committee

[ ] further referral to _____ Committee

Senate Bill:
[ ] Same Title
[ ] New Title

House Bill:
[ ] Same Title
[ ] Technical Title Change
[ ] New Title w/ SCR #_____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
EED	2/22			X	2

[ ] **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
			✓	
Lyda Green	✓			
Tony Willett	✓			
Donald Olson	✓			
CHAIR: Fred Dyer	—			

REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

MEMORANDUM

DATE: April 6, 2005

TO: Senator Fred Dyson, Chairman
Senate HESS Committee

CC: Senator Gary Wilken, Vice-Chair
Senator Lyda Green
Senator Kim Elton
Senator Donny Olson

FROM: Michael Pawlowski, Representative Meyer's Office

RE: Testimony on House Bill 85 *Prescribed Medication for Students*

Mr. Chairman,

Attached is the opinion from legislative legal regarding the application of HB 85 *Prescribed Medication for Students* to private schools. Your reiteration, and clarification of the testimony I gave was that HB 85 does not apply to private schools, but that if a private school chose to follow the law they could receive the same benefits.

The attached memorandum from legislative legal clarifies that HB 85 does **not** apply to private schools, but that if a private school chose to follow the law they would benefit from the indemnity provisions and not necessarily the law itself. The distinction I failed to make in my testimony to the committee was that a private school benefits not from the passage of HB 85, but from following the prescribed steps in the legislation.

I sincerely apologize for failing to make that distinction and thank the Chairman and committee for their consideration. If I can be of any further service please contact me at extension 2812.

Thank you,

Michael Pawlowski

Email: Representative_Kevin_Meyer@legis.state.ak.us • **Toll Free:** (866) 465-4945
Session: State Capitol, Juneau, Alaska 99801-1182 • Phone: (907) 465-4945 Fax: (907) 465-3476
Interim: 716 W. 4th Ave., Anchorage, Alaska 99501-2133 • Phone: (907) 269-0199 Fax: (907) 269-0197

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM April 6, 2005

SUBJECT: Effect of HB 85 on Private Schools (CSHB 85(JUD)
Work Order No. 24-LS0367\Y)

TO: Representative Kevin Meyer
Attn: Mike Pawlowski

FROM: Jean Mischel
Legislative Counsel

You have asked whether CSHB 85(JUD) applies to private schools, and if not, whether a private school may choose to comply with the Act, should it become law, and receive what is construed as the immunity protections provided in the bill. The bill requires a school to permit self administration of certain prescribed medication by a student under a specified procedure. The procedure includes the provision of a release of liability and a hold harmless agreement to the school.

In my opinion, HB 85 does not expressly apply to private schools and, while a private school is not otherwise precluded from following an identical procedure as contained in HB 85 to allow for self administration of medication by a student at the school, it is inaccurate to say that the bill would voluntarily apply to the school and therefore afford additional protection. However, if the procedures in the bill are followed, the school would have acquired a release and indemnity agreement from the parents of the school that presumably would afford the school protection from civil liability if drafted correctly.

There is a type of exemption for religious and private schools from government regulation under AS 14.45.100. The exemption is quite narrow and reads as follows:

> AS 14.45.100. EXEMPTION. A religious or other private school that complies with AS 14.45.100 - 14.45.130 is exempt from other provisions of law and regulations relating to education except law and regulations relating to physical health, fire safety, sanitation, immunization, and physical examinations.

A "private school" is defined in AS 14.45.200 as a school that accepts no state or federal funds.

The exemption under AS 14.45.100 pertains to laws and regulations relating to education and specifically requires only those private schools that choose to comply with AS 14.45.100-14.45.300 to comply with other laws and regulations relating to health and safety. The exemption walks a fine line between competing constitutional interests including protecting public health, safety and welfare and prohibiting interference with free exercise of religion and establishment issues raised by over regulation. It may be argued under the police powers of the state that all private schools, whether in compliance with AS 14.45.100-14.45.300 or not, may be regulated for the benefit of the health, safety and welfare of the students and staff.

The exemption only requires compliance with a specific list of health and safety laws. The list does not include medication other than immunizations though the term "physical health" may be read broadly to include the administration of a select few prescription medications taken by some students. The question really is one of degree.

HB 85 does not even affect all students - only those who need asthma and anaphylactic medication and whose parents are willing to go through the documentation process required by the bill. Does HB 85 relate so strongly to a need to protect the health and welfare of students that it should be applied to all public and private school students, in the face of a potential First Amendment challenge? The legislature has made this judgment call in other instances.

For example, the legislature expressly extended the Safe School Zone Act to private schools under AS 11.61.210. A principal of a public or private school is required to train students in emergency safety drills under AS 14.03.140. In addition, a provision allowing for the search of school lockers by peace officers and other appropriate persons was cross-referenced for voluntary private school applicability under AS 14.43.190.

HB 85's effect is not expressly applicable to private schools by either a reference to private schools or the addition of a cross-reference in AS 14.45.100-14.45.300 as has been done in the past to make the legislative intent clear. Notably, a federal law encouraging states to allow self-administration of medication by students for preferential receipt of federal funds does not extend to private schools.

Absent an amendment to the bill to expressly apply the self-administration of medication procedure to private schools, it is doubtful that a court would apply the provision to private schools either for voluntary or mandatory compliance. Even if a court found that HB 85's procedure relates to "physical health" under AS 14.45.100, the exemption only requires compliance when the private school elects to meet other standards under AS 14.45.100-14.45.300. If a court found that HB 85's procedures otherwise fall within the police powers of the state, then the procedures could be mandated, a result I think that the private schools wish to avoid.

I can recommend a few changes to this bill to allow for voluntary compliance by a private school if that is the intent of this bill. Without a change, the applicability to a private

school is questionable. A private school could, it seems to me, set up its own procedures allowing self-administration of medication in the school that include a release and indemnity agreement without the passage of HB 85.

If I may be of further assistance, please advise.

JMM:lmb
05-107.lmb