11458 HOUSE JUDICIARY

Josh Applebee

From: Sally Saddler [sally_saddler@commerce.state.ak.us]
Sent: Wednesday, January 19, 2005 11:57 AM
To: Josh Applebee
Cc: Bill J Rolfzen
Subject: List of Communities
Attachments: PopListforRepAnderson 011905.xls

Hi Josh!

Bill Rolfzen has pulled together the attached list of communities you requested.

This list is our best estimate of the communities that "are" and "are not" connected by road or rail to Anchorage or Fairbanks. The list is sorted by *No* and *Yes* and *Population*. You can change your population cutoff thresholds as you play with this!. The Community list was pulled from our community database which includes Alaska Native Village Statistical Areas (ANVSAs), Census Designated Places (CDPs), Incorporated Cities, and Incorporated Boroughs.

Let me know if you need additional info!

Sally Saddler
Department of Commerce, Community & Economic Development
PO Box 110800
Juneau, AK 99811.0800
Phone: 907.465.2503
Fax: 907.465.5442
Email: sally_saddler@commerce.state.ak.us

Community	2003 Population	On Road or Rail to Anchorage or Fairbanks
Afognak	0	N
Alpine	0	N
Belkofski	0	N
Bill Moore's Slough	0	N
Chuloonawick	0	N
Council	0	N
Cube Cove	0	N
Ekuk	0	N
Flat	0	N
Hamilton	0	N
Kaguyak	0	N
Kanatak	0	N
King Island	0	N
Mary's Igloo	0	N
Napaimute	0	N
Ohogamiut	0	N
Paimiut	0	N
Pauloff Harbor	0	N
Port William	0	N
Umkumiute	0	N
Unga	0	N
Woody Island	0	N
Hobart Bay	1	N
Telida	2	N
Georgetown	3	N
Ivanof Bay	3	N
Prudhoe Bay	4	N
Prudhoe Bay	4	N
Solomon	4	N
Pope-Vannoy Landing	10	N
Thom's Place	11	N
Chisana	12	N
Excursion Inlet	12	N
Ugashik	12	N
Meyers Chuck	18	N
Alatna	21	N
Evansville	21	N
Rampart	21	N
Port Clarence	22	N
Lake Minchumina	23	N
Attu Station	24	N
Karluk	24	N
Halibut Cove	25	N
Beluga	26	N
Shemya Station	27	N
Wiseman	29	N
Kupreanof	30	N
Elfin Cove	32	N
Betties	33	N

Community	2003 Population	Fairbanks
Birch Creek	33	N
Healy Lake	33	N
Point Baker	33	N
Red Dog Mine	35	N
Game Creek	36	N
Lutak	36	N
New Allakaket	38	N
Jakolof Bay	39	N
Platinum	40	N
Nikolski	41	N
Red Devil	41	N
Lime Village	43	N
Edna Bay	45	N
Pedro Bay	45	N
Chiniak	49	N
Stony River	49	N
Igiugig	50	N
Akhiok	51	N
Kasaan	55	N
Aleneva	56	N
Port Protection	57	N
Whitestone Logging Camp	60	N
Portage Creek	61	N
Oscarville	62	N
Takotna	63	N
Nelson Lagoon	64	N
Beaver	65	N
Hughes	65	N
Clark's Point	66	N
Whale Pass	67	N
False Pass	69	N
Pilot Point	70	N
Port Alexander	70	N
Levelock	71	N
Sleetmute	72	N
Twin Hills	75	N
Hyder	77	N
Egegik	84	N
Chalkyitsik	86	N
Stevens Village	86	N
Port Heiden	87	N
Chignik	89	N
Chignik Lagoon	92	N
Iliamna	92	N
Skwentna	94	N
Atka	95	N
Cold Bay	95	N
Larsen Bay	96	N
Chenega Bay	99	N
Allakaket	102	N
Chuathbaluk	102	N

Community	2003 Population	Fairbanks
South Naknek	102	N
Port Alsworth	105	N
Perryville	106	N
Tenakee Springs	106	N
Pitkas Point	107	N
Anvik	108	N
Naukati Bay	109	N
Koyukuk	111	N
Tatitlek	111	N
Chignik Lake	113	N
Pelican	113	N
Kobuk	125	N
Covenant Life	126	N
Nikolai	127	N
Ekwok	128	N
Diomede	129	N
Deering	131	N
Tetlin	137	N
Seldovia Village	138	N
Crooked Creek	146	N
Golovin	146	N
Shageluk	146	N
Andreafsky	149	N
Mud Bay	149	N
Saint George	149	N
Adak	150	N
Wales	158	N
Coffman Cove	163	N
Port Graham	165	N
Arctic Village	166	N
Grayling	166	N
Newhalen	167	N
Ruby	169	N
Ouzinkie	170	N
Hollis	178	N
Kokhanok	182	N
Tyonek	193	N
Venetie	199	N
Koliganek	200	N
Nunam Iqua	204	N
Nunam Iqua	204	N
Mekoryuk	205	N
Holy Cross	209	N
Old Harbor	211	N
Nanwalek	214	N
White Mountain	214	N
Nondalton	217	N
Mosquito Lake	219	N
Shaktoolik	223	N
Nightmute	228	N
Kaltag	229	N

Community	2003 Population	Fairbanks
Upper Kalskag	231	N
Aleknagik	235	N
Teller	242	N
Goodnews Bay	245	N
Atqasuk	247	N
Port Lions	251	N
Shungnak	264	N
Point Lay	265	N
Lower Kalskag	267	N
Atmautluak	279	N
Eek	290	N
Tanana	290	N
Ambler	291	N
Huslia	291	N
Kaktovik	295	N
Seldovia	300	N
Tuntutuliak	304	N
Russian Mission	310	N
Brevig Mission	314	N
Anaktuvuk Pass	319	N
Newtok	329	N
Akiak	337	N
Koyuk	340	N
Elim	341	N
Nulato	342	N
Kwigillingok	343	N
Marshall	368	N
Hydaburg	370	N
Napakiak	380	N
Tuntutuliak	381	N
King Salmon	385	N
Kivalina	388	N
Kongiganak	401	N
Manokotak	405	N
Kiana	408	N
Buckland	410	N
Saint Michael	413	N
McGrath	415	N
Nuiqsut	416	N
Napaskiak	419	N
Saxman	425	N
Chefornak	434	N
Gustavus	438	N
Tuluksak	464	N
Noatak	469	N
Scammon Bay	470	N
Thorne Bay	480	N
New Stuyahok	493	N
Nunapitchuk	498	N
Angoon	505	N
Kasigluk	529	N

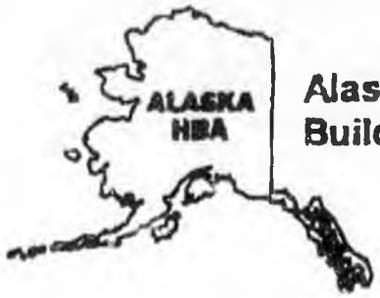
Community	2003 Population	Fairbanks
Saint Paul	539	N
Aniak	551	N
Wainwright	553	N
Fox River	563	N
Pilot Station	564	N
Stebbins	570	N
Toksook Bay	572	N
Fort Yukon	574	N
Quinhagak	579	N
Saint Mary's	585	N
Shishmaref	594	N
Kotlik	609	N
Naknek	614	N
Akiachak	633	N
Gambell	647	N
Kipnuk	649	N
Noorvik	649	N
Alakanuk	666	N
Womens Bay	667	N
Kake	682	N
Yakutat	691	N
Savoonga	704	N
Point Hope	725	N
Kwethluk	730	N
King Cove	737	N
Unalakleet	741	N
Mountain Village	750	N
Emmonak	763	N
Galena	763	N
Akutan	787	N
Selawik	821	N
Togiak	824	N
Hoonah	851	N
Klawock	851	N
Chevak	884	N
Sand Point	947	N
Bristol Bay Borough	1105	N
Hooper Bay	1115	N
Craig	1174	N
Lazy Mountain	1188	N
Metlakatla	1398	N
Lake & Peninsula Borough	1628	N
Wrangell	2113	N
Kodiak Station	2192	N
Haines Borough	2327	N
Fishhook	2342	N
Cordova	2372	N
Dillingham	2373	N
Aleutians East Borough	2700	N
Butte	2931	N
Petersburg	3060	N

Community	2003 Population	Fairbanks
Kotzebue	3076	N
Nome	3448	N
Unalaska	4388	N
Unalaska	4388	N
Barrow	4417	N
Meadow Lakes	5443	N
Douglas	5483	N
Bethel	5899	N
Kodiak	6138	N
Northwest Arctic Borough	7301	N
Ketchikan	8002	N
Sitka	8891	N
Ketchikan Gateway Borough	13548	N
Kodiak Island Borough	13811	N
Juneau	31283	N
Uganik		N
Miller Landing	0	Y
Fort Greely	6	Y
Alcan Border	13	Y
Petersville	14	Y
Coldfoot	15	Y
Sunrise	15	Y
Livengood	20	Y
Chicken	21	Y
Tolsona	28	Y
Ferry	32	Y
Dot Lake	33	Y
Chase	34	Y
Four Mile Road	36	Y
Dot Lake Village	37	Y
Susitna	38	Y
Paxson	44	Y
McCarthy	53	Y
Eagle Village	59	Y
Nelchina	66	Y
Mendeltna	67	Y
Manley Hot Springs	73	Y
Crown Point	78	Y
Northway	82	Y
Chistochina	85	Y
Primrose	87	Y
Lowell Point	89	Y
Northway Village	95	Y
Circle	96	Y
Gulkana	98	Y
Northway Junction	98	Y
Tonsina	106	Y
Dry Creek	109	Y
Lake Louise	109	Y
Central	113	Y
Central	113	Y

Community	2003 Population	Fairbanks
Klukwan	114	Y
Slana	118	Y
Eagle	126	Y
Chitina	132	Y
McKinley Park	133	Y
Mentasta Lake	143	Y
Eyak	144	Y
Tanacross	144	Y
Silver Springs	148	Y
Hope	161	Y
Willow Creek	174	Y
Clam Gulch	176	Y
Copperville	176	Y
Whittier	178	Y
Tazlina	192	Y
Point MacKenzie	194	Y
Harding-Birch Lakes	210	Y
Gakona	214	Y
Moose Pass	221	Y
Cantwell	226	Y
Minto	234	Y
Chickaloon	242	Y
Glacier View	256	Y
Nikolaevsk	313	Y
Fox	316	Y
Cooper Landing	358	Y
Kenny Lake	369	Y
Copper Center	400	Y
Trapper Creek	426	Y
Eklutna	427	Y
Kachemak	473	Y
Happy Valley	503	Y
Nenana	519	Y
Kasilof	571	Y
Glennallen	574	Y
Moose Creek	574	Y
Anderson	592	Y
Two Rivers	592	Y
Knik River	654	Y
Pleasant Valley	677	Y
Big Delta	699	Y
Funny River	705	Y
Buffalo Soapstone	756	Y
Ninilchik	777	Y
Skagway	845	Y
Talkeetna	847	Y
Salcha	865	Y
Salamatof	902	Y
Delta Junction	984	Y
Healy	1022	Y
Diamond Ridge	1086	Y

Community	2003 Population	Fairbanks
Farm Loop	1124	Y
Sutton-Alpine	1174	Y
Cohoe	1201	Y
Houston	1339	Y
Tok	1435	Y
North Pole	1646	Y
Deltana	1691	Y
Haines	1715	Y
Fritz Creek	1740	Y
Ester	1774	Y
Bear Creek	1823	Y
Anchor Point	1826	Y
Willow	1838	Y
Girdwood	1850	Y
Denali Borough	1914	Y
Ridgeway	2011	Y
Seward	2733	Y
Big Lake	2839	Y
Gateway	3292	Y
Soldotna	4059	Y
Valdez	4060	Y
Nikiski	4357	Y
Eielson AFB	4437	Y
Sterling	4888	Y
Homer	4893	Y
Palmer	5474	Y
Tanaina	5843	Y
Kalifornsky	6230	Y
Wasilla	6715	Y
Lakes	6980	Y
Kenai	7125	Y
North Slope Borough	7253	Y
Knik-Fairview	8488	Y
College	11929	Y
Fairbanks	29486	Y
Eagle River-Chugiak	30000	Y
Kenai Peninsula Borough	51220	Y
Matanuska-Susitna Borough	67473	Y
Fairbanks North Star Borough	82214	Y
Anchorage	274003	Y

Note: List includes Alaska Native Village Statistical Areas (ANVSAs), Censu



Alaska State Home
Building Association

8301 Schoon, Ste 200
Anchorage, Alaska 99518

A Resolution of the Alaska State Homebuilding Association (ASHBA) in Support of legislation to issue civil penalties against first-time violations by unregistered construction contractors

WHEREAS the Division of Occupational Licensing reports that there are over 1,600 business licenses for construction contractors who are not registered to perform construction projects over $5,000; and

WHEREAS unregistered contractors are not required by state law to obtain general liability insurance or meet educational standards that are required for registered contractors; and

WHEREAS many builders and consumers have reported incidences where unregistered contractors are offering construction services in violation of state law; and

WHEREAS prosecution of violations by unregistered must done by the Department of Law through criminal procedures under current law; and

WHEREAS the Department of Law often gives a low priority to prosecuting these types of violations in consideration of budget restraints and the pursuit of more serious criminal violations; and

WHEREAS enforcement officers within the Department of Labor and/or the Department of Community & Economic Development could be given the authority to issue a civil penalty against first-time violations of construction contract laws;

BE IT THERFORE RESOLVED that the ASHBA supports legislation to allow enforcement officers within the Department of Labor and/or the Department of Community & Economic Development to have the authority to issue civil penalties for first-time violations of construction contract laws by unregistered contractors, and

BE IT FURTHER RESOLVED that the ASHBA Board of Directors requests the Alaska Legislature to sponsor and pass such legislation during the 2005 Legislative Session.

Adopted, this the 28th day of October 2004.

Signed: R.F. Hamilton
President

Attest:
Past President

Vanessa Tondini

From: Rep. Lesil McGuire
Sent: Tuesday, February 08, 2005 2:37 PM
To: Vanessa Tondini
Subject: FW: HB81

From: Dave Kerr [mailto:Dave_Kerr@ci.juneau.ak.us]
Sent: Thursday, February 03, 2005 11:43 AM
To: Rep. Lesil McGuire
Subject: HB81

Lesil,
Please support HB81
David Kerr, CBJ Building Inspector III

Vanessa Tondini

From: Rep. Lesil McGuire
Sent: Tuesday, February 08, 2005 2:40 PM
To: Vanessa Tondini
Subject: FW: HB81

From: Dianne Ireland [mailto:bestmix@alaska.net]
Sent: Thursday, February 03, 2005 3:04 PM
To: Rep. Lesil McGuire
Subject: HB81

- As a member of the construction industry we are very aware of the problems involved with unlicensed contractors. I support HB81 wholeheartedly. Something should definetely be done to protect the consumers.

  Thanks for your support
  Terry Best
  CEO
  Best Transit Mix, Inc.
  Soldotna

Vanessa Tondini

From: Rep. Lesil McGuire
Sent: Tuesday, February 08, 2005 2:41 PM
To: Vanessa Tondini
Subject: FW: HB 81 - Enforcement Actions Against Unlicensed ('Handyman') Contractors

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From: Margene [mailto:desmet@alaska.com]
Sent: Thursday, February 03, 2005 7:56 PM
To: Rep. Lesil McGuire
Subject: HB 81 - Enforcement Actions Against Unlicensed ('Handyman') Contractors

Representative Lesil McGuire, Chair:

As a member of the Construction Industry in Alaska for 30 years, I urge you to support HB 81. As you are aware, there are problems with unlicensed contractors building homes in Alaska. These people continue to ignore the current statutes and thumb their noses at professional builders and remodelers. Your support of HB 81 would go a long way to protect Alaskan consumers from illegal contractors and help DOL enforcement officers pressure these individuals into current statute compliance.

As a member of the Board of Directors for the Alaska State Homebuilders Association representing over 250 licensed General Contractors, and as the President of the Southeast Alaska Building Industry Association (Juneau) representing approximately 35 licensed professionals locally in Juneau, I would respectfully urge you to consider support of HB 81 as a sensible solution to the enforcement of unlicensed contractors.

Thank you for your consideration.

Respectfully,

Jeffrey DeSmet

Owner/ J. DeSmet Construction/Residential Building Contractor
President - Southeast Alaska Building Industry Association (SEABIA)
Board Member - Alaska State Homebuilders Association (ASHBA)

Vanessa Tondini

From: Rep. Lesil McGuire
Sent: Tuesday, February 08, 2005 2:43 PM
To: Vanessa Tondini
Subject: FW: House Bill 81

From: boost empire [mailto:boost79i@yahoo.com]
Sent: Monday, February 07, 2005 3:14 PM
To: Rep. Lesil McGuire
Cc: Rep. John Coghill; Rep. Nancy Dahlstrom; Rep. Max Gruenberg; Rep. Les Gara; Rep. Tom Anderson; Rep. Pete Kott
Subject: House Bill 81

Dear Representatives-

It has come to my attention that House Bill 81 is going to have a hearing on Wednesday, February 9th, 2005. House Bill 81, enforcement actions against unlicensed contractors is of great importance to me in that if affects my business on a daily basis. There are roughly 400 unlicensed "handymen" operating in the Anchorage area who refuse to get permits, refuse to stand by their warranty claims and who refuse to be straightforward with the owner as to what insurance they do or do not carry. We are constantly being called to repair their work after the fact.
It is absolutely crucial that the owner/builder definition be redefined and that handymen be required to be licensed and treated as a specialty contractor across the state. This levels the playing field. I urge you to support the passage of House Bill 81.

Thank You,

N. Claiborne Porter, Jr.
NCP Design/Build LTD

HB

85

HOUSE COMMITTEE REPC Γ

(7)

Date Referred to Committee: February 18, 2005 **FURTHER REFERRALS: Finance**

Date of Committee Action: March 7, 2005

The JUDICIARY Committee considered: **HB 85**

HOUSE BILL NO. 85 **PRESCRIBED MEDICATION FOR STUDENTS**

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

Recommends it be replaced with [ ] HCS *or* [X] CS *for* HB 85 / (JUD)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[✓] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LEG
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

NEW **FISCAL NOTES** *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
EED				✓

PREVIOUS **FISCAL NOTES**				
List by Dep 's):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	Gruenberg	–			
	Dahlstrom	X			
	Coghill	–			
	Gara	–			
Chair:	McGuire	✓			
Chair:					

HOUSE COMMITTEE REPC T

b

2-18-05

(7)

Date Referred to Committee: January 19, 2005 **FURTHER REFERRALS: Judiciary**

Date of Committee Action: February 15, 2005

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered: **HB 85**

HOUSE BILL NO. 85 **PRESCRIBED MEDICATION FOR STUDENTS**

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

Recommends it be replaced with [ ] HCS *or* [X] CS *for* HB 85 (HES)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[X] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
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DOT
UA

NEW **FISCAL NOTES** *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
EED	1		✓	

PREVIOUS **FISCAL NOTES**				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP (Q)	DNP	NR	AM
Sharon McInnis	CISSNA	✓			
Benton Gardner	GARDNER	✓			
Tom Anderson	ANDERSON	✓			
Pete McGee	McGEE	X			
Paul R Seaton	SEATON	✓			
Chair: Peggy Wilson	WILSON	✓			
Chair:					

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ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. John Coghill
Rep. Nancy Dahlstrom
Rep. Pete Kott
Rep. Les Gara
Rep. Max Gruenberg

State Capitol, Room 120
Juneau AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

House Judiciary Committee

Memorandum

To: Leg. Legal

From: Vanessa Tondini, Committee Aide
House Judiciary Committee

Date: March 7, 2005

Re: CS Request

Please create a final draft House Judiciary Committee Substitute for work order # 24-LS0367\F, HB 85, incorporating the attached four amendments. The bill was passed out of committee today.

If you have any questions, please call me at 4990.
Thank you!

HB85

Vanessa Tondini

From: Susan Rael
Sent: Monday, March 07, 2005 5:01 PM
To: Vanessa Tondini
Subject: snippets

Conceptual A# 1 by Rep. McGuire PASSED

Hi Vanessa. Here is what I got for HB 85's first and fourth amendments:

lm-close public. she asked about an amendment that she offered in the House Health, Education and Social Services Standing Committee that would allow the school nurse to keep, if the child and parents agreed, an epipen (ph) or an inhaler in the nurse's office in the event that the child forgets his/her medication.

and

lm-made a motion to adopt Conceptual Amendment 1, to say that if the parents and the child agree, they can have an epipen (ph) or an inhaler on hand in the nurse's office in case the child forgets his/her medication and needs it.

---

and

A #4 by Rep. Gruenberg PASSED

mg-move Amendment 4 to strike "advanced nurse practitioner" and "public health nurse" from page 2, lines 27-28, and insert "licensed nurse". Amendment 4 adopted

(B) has received instruction in the proper method of self-administration of the medication; and

(C) is able to self-administer the medication safely;

(3) a release of liability for the school and its employees or agents for injury arising from the self-administration of the medication; and

(4) an agreement to indemnify and hold harmless the school and its employees or agents for any claims arising out the self-administration of the medication.

(b) The school shall provide written notification to the pupil's parent or guardian of the school's absence of liability related to the self-administration of medication under this section.

(c) A pupil who is permitted to self-administer medication under this section shall be permitted to carry an inhaler or autoinjectable epinephrine, or both, at all 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.

(e) In this section, "health care provider" means a licensed physician, ~~advanced nurse practitioner~~, physician assistant, village health aide, ~~or public health nurse~~.

A#1 by Gruenberg PASSED

a licensed nurse

Amendment #2
HB 85 version 24-LS0367\F

by Rep. McGuire

PASSED

To page 2, lines 27

Insert: "pharmacist," following "village health aide,"

Amendment #3
HB 85 version 24-LS0367\F
by Rep McGuire
PASSED

To page 2, lines 20-25

Delete:

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.**

Insert:

times.

(d) "If a student uses his/her prescribed medication in a manner other than as prescribed, disciplinary action according to school codes may be imposed upon him/her. The imposed disciplinary action cannot limit or restrict the students' immediate access to his/her prescribed medication."

Duty of medical practitioner to warn patient of subsequently discovered danger from treatment previously given, 12 ALR4th 41.

Liability for failure of physician to inform patient of alternative modes of diagnosis or treatment, 38 ALR4th 900.

Medical practitioner's liability for treatment given child without parents' consent, 67 ALR4th 511.

Malpractice: physician's duty, under informed consent doctrine, to obtain patient's consent to treatment in pregnancy or childbirth cases, 89 ALR4th 799.

Sec. 09.55.560. Definitions. In AS 09.55.530 — 09.55.560,

(1) "health care provider" means an acupuncturist licensed under AS 08.06; an audiologist or speech-language pathologist licensed under AS 08.11; a chiropractor licensed under AS 08.[illegible]; a dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.[illegible]; a nurse licensed under AS 08.68; a dispensing optician licensed under AS 08.71; a naturopath licensed under AS 08.45; an optometrist licensed under AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist or occupational therapist licensed under AS 08.84; a physician or physician assistant licensed under AS 08.64; a podiatrist; a psychologist and a psychological associate licensed under AS 08.86; a hospital as defined in AS 18.20.130, including a governmentally owned or operated hospital; an employee of a health care provider acting within the course and scope of employment; an ambulatory surgical facility and other organizations whose primary purpose is the delivery of health care, including a health maintenance organization, individual practice association, integrated delivery system, preferred provider organization or arrangement, and a physical hospital organization;

(2) "board" means an arbitration board established under AS 09.55.535;

(3) "panel" means an expert advisory panel established under AS 09.55.536;

(4) "professional negligence" means a negligent act or omission by a health care provider in rendering professional services;

(5) "professional services" means service provided by a health care provider that is within the scope of services for which the health care provider is licensed and that is not prohibited under the health care provider's license or by a facility in which the health care provider practices. (§ 37 ch 102 SLA 1976; am § 24 ch 177 SLA 1978; am § 6 ch 56 SLA 1986; am § 9 ch 131 SLA 1986; § 26 ch 2 FSSLA 1987, am § 9 ch 6 SLA 1990; am § 1 ch 14 SLA 1991; am §§ 26, 27 ch 26 SLA 1997; am § 19 ch 42 SLA 2000; am § 1 ch 18 SLA 2002)

Cross references. — For a statement of legislative intent relating to the provisions of ch. 26, SLA 1997, see § 1, ch. 26, SLA 1997 in the 1997 Temporary and Special Acts. For severability of the provisions of ch. 26, SLA 1997, see § 56, ch. 26, SLA 1997 in the 1997 Temporary and Special Acts.

Effect of amendments. — The 1990 amendment inserted "an acupuncturist licensed under AS 08.06" near the beginning of paragraph (1).

The 1991 amendment, effective January 1, 1992, in paragraph (1), deleted "a corporate entity covered under AS 21.88.050(b)(11)" following "governmentally owned or operated hospital."

The 1997 amendment, effective August 7, 1997, in paragraph (1), added the language beginning "an ambulatory surgical facility" to the end and made minor stylistic changes; and added paragraphs (4) and (5).

The 2000 amendment, effective October 1, 2000, inserted "or speech-language pathologist" in paragraph (1).

The 2002 amendment, effective August 6, 2002, inserted "or physician assistant" near the middle of paragraph (1).

Editor's notes. — Section 55, ch. 26, SLA 1997 provides that the provisions of ch. 26, SLA 1997 apply "to all causes of action accruing on or after August 7, 1997."

Article 7. Survival and Wrongful Death Actions.

Section
570. All causes of action survive
580. Action for wrongful death

Sec. 09.55.570. All causes of action survive. All causes of action by one person against another, whether arising on contract or otherwise, except those involving defamation of character, survive to the personal representatives of the former and against the personal representatives of the latter, but this shall not be construed so as to

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: CS HB085-EED-02-22-05
() Publish Date:

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

Amendment #1
HB 85 version 24-LS0367\F

To page 2, lines 20-25

Delete:

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.**

Insert:

times.

(d) "If a student uses his/her prescribed medication in a manner other than as prescribed, disciplinary action according to school codes may be imposed upon him/her. The imposed disciplinary action cannot limit or restrict the students' immediate access to his/her prescribed medication."

Amendment #2
HB 85 version 24-LS0367\F

To page 2, lines 27

Insert: "pharmacist," following "village health aide,"

Duty of medical practitioner to warn patient of subsequently discovered danger from treatment previously given, 12 ALR4th 41.

Liability for failure of physician to inform patient of alternative modes of diagnosis or treatment, 38 ALR4th 900.

Medical practitioner's liability for treatment given child without parents' consent, 67 ALR4th 511.

Malpractice: physician's duty, under informed consent doctrine, to obtain patient's consent to treatment in pregnancy or childbirth cases, 89 ALR4th 799.

Sec. 09.55.560. Definitions. In AS 09.55.530 — 09.55.560,

(1) "health care provider" means an acupuncturist licensed under AS 08.06; an audiologist or speech-language pathologist licensed under AS 08.11; a chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under AS 08.71; a naturopath licensed under AS 08.45; an optometrist licensed under AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist or occupational therapist licensed under AS 08.84; a physician or physician assistant licensed under AS 08.64; a podiatrist; a psychologist and a psychological associate licensed under AS 08.86; a hospital as defined in AS 18.20.130, including a governmentally owned or operated hospital; an employee of a health care provider acting within the course and scope of employment; an ambulatory surgical facility and other organizations whose primary purpose is the delivery of health care, including a health maintenance organization, individual practice association, integrated delivery system, preferred provider organization or arrangement, and a physical hospital organization;

(2) "board" means an arbitration board established under AS 09.55.535;

(3) "panel" means an expert advisory panel established under AS 09.55.536;

(4) "professional negligence" means a negligent act or omission by a health care provider in rendering professional services;

(5) "professional services" means service provided by a health care provider that is within the scope of services for which the health care provider is licensed and that is not prohibited under the health care provider's license or by a facility in which the health care provider practices. (§ 37 ch 102 SLA 1976; am § 24 ch 177 SLA 1978; am § 6 ch 56 SLA 1986; am § 9 ch 131 SLA 1986; § 26 ch 2 FSSLA 1987; am § 9 ch 6 SLA 1990; am § 1 ch 14 SLA 1991; am §§ 26, 27 ch 26 SLA 1997; am § 19 ch 42 SLA 2000; am § 1 ch 18 SLA 2002)

Cross references. — For a statement of legislative intent relating to the provisions of ch. 26, SLA 1997, see § 1, ch. 26, SLA 1997 in the 1997 Temporary and Special Acts. For severability of the provisions of ch. 26, SLA 1997, see § 56, ch. 26, SLA 1997 in the 1997 Temporary and Special Acts.

Effect of amendments. — The 1990 amendment inserted "an acupuncturist licensed under AS 08.06" near the beginning of paragraph (1).

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Editor's notes. — Section 55, ch. 26, SLA 1997 provides that the provisions of ch. 26, SLA 1997 apply "to all causes of action accruing on or after August 7, 1997."

Article 7. Survival and Wrongful Death Actions.

Section
570. All causes of action survive
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Sec. 09.55.570. All causes of action survive. All causes of action by one person against another, whether arising on contract or otherwise, except those involving defamation of character, survive to the personal representatives of the former and against the personal representatives of the latter, but this shall not be construed so as to

REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

MEMORANDUM

DATE: **March 1, 2005**

TO: **Representative Lesil McGuire, Chairman**
House Judiciary Committee

FROM: **Representative Kevin Meyer**

RE: **Hearing Request for CS House Bill 85 *Prescribed Medication for Students***

Please schedule HB 85 *Prescribed Medication for Students* for a hearing in the House Health and Social Services Committee at your earliest convenience.

HB 85 requires schools to permit students' to self-administer medication for asthma, anaphylaxis with certain provisions.

Included in this packet:

- CSHB 85 *Prescribed Medication for Students* v. LS-0367\F
- Sponsor Statement
- Sectional Analysis
- Fiscal Note
- Change Summary
- HB 85 *Prescribed Medication for Students* v. LS-0367\G
- 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
- Map of states with statutes protecting students' rights to carry and use prescribed asthma and anaphylaxis medications.
- American Journal of Public Health Article
- List of Contacts

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. 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.
- 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 3/01/05)

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

LEGAL SERVICES

COPY

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 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: 1
Bill Version: CSHB 85(HES)
(H) Publish Date: 2/18/05

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	*	*	*	*	*
Miscellaneous						
TOTAL OPERATING	0.0	*	*	*	*	*
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	*	*	*	*	*
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	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 2/8/05 4:24 PM
Approved by: Karen Rehfeld, Deputy Comissioner
Date 2/8/2005
Agency Education & Early Development

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

American Academy of Pediatrics

DEDICATED TO THE HEALTH OF ALL CHILDREN™

Alaska Chapter

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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 Association of Alaska School Boards 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 Contruction 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 - Scolosis 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

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Anchorage, AK 99507-1069
www.aknurse.org
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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

NASN
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 Youth

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_____

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	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-W/ Parent, Physician permission required	Y-W/ Parent, Physician 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 NA/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		Middle school student w/severe asthma had 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
Valdez City	X		Students have had attacks, but they have been able to come to the office to take their medication.	X- See comment		
Wrangell City		X			X	
Yupiit		X				X- Needs to be based on individual needs
Totals: 32	7	24		16	11	4

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

R E P O R T

[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, or 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 th mpact of this chronic disease on the use of health care facilities, ttendance 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 399L 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

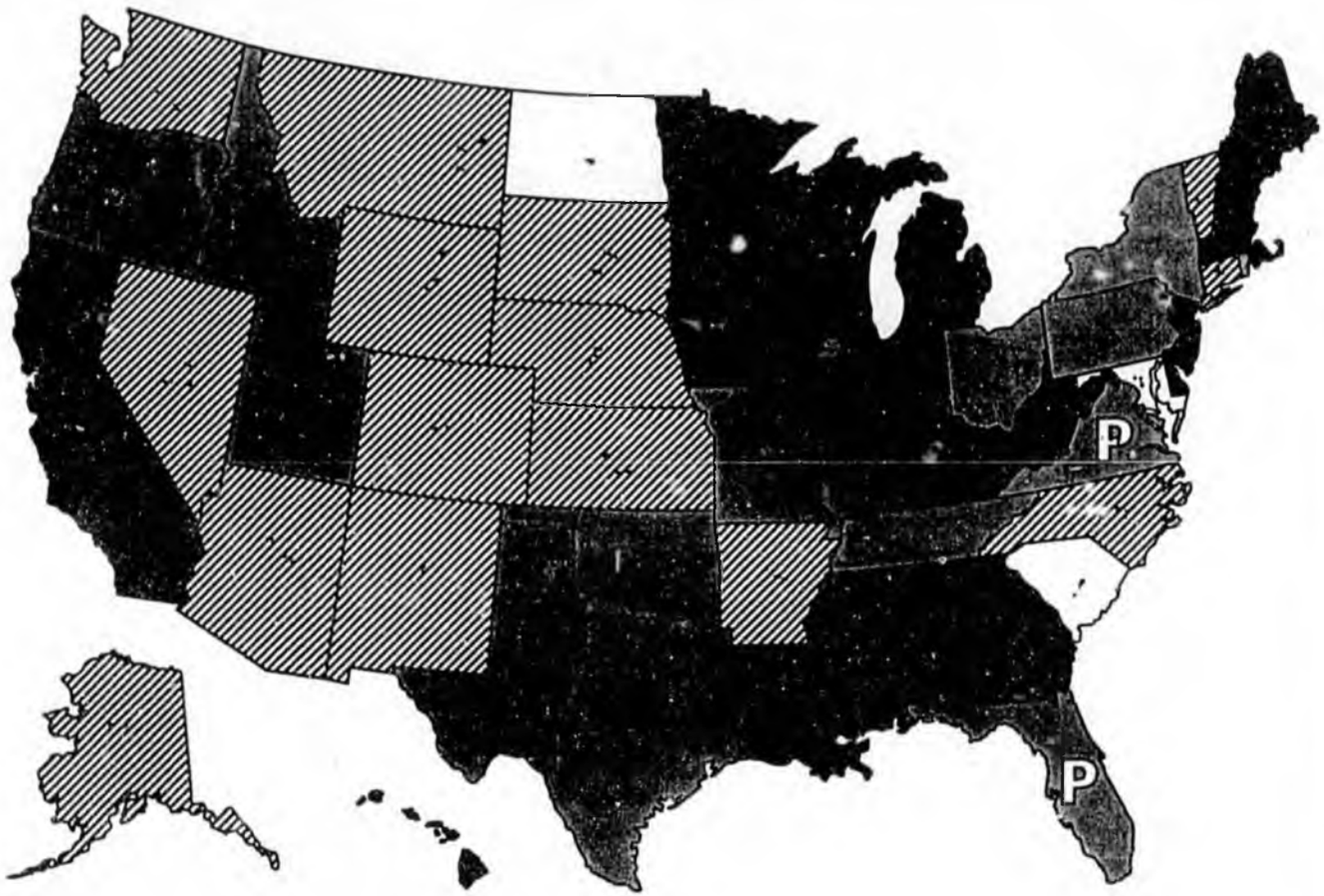
prescription or written direction from a health care practitioner.

* * * * * * *

○

Allergy & Asthma Network
Mothers of Asthmatics

State Statutes Protecting Student Rights to Carry and Use Prescribed Asthma and Anaphylaxis Medications



Color Key:

- States that protect student rights to possess and self-administer prescribed lifesaving asthma and anaphylaxis medications.
- States that protect student rights to possess and self-administer prescribed lifesaving asthma medications.
- States that protect student rights to possess and self-administer prescribed lifesaving asthma medications and have pending legislation also allowing anaplylaxis medications.
- States that have pending legislation.
- States that do not have statutes protecting student rights to possess and self-administer prescribed lifesaving asthma and/or anaphylaxis medications.

Updates at 800.878.4403

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AANMA01/2004-0162-PDF

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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,[3] 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.[44,48-50] 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 for 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.[54] 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.[50,64] 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.[55,56,66] 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]

and self-administration provisions are appropriate.

It is best if asthma management plans are on file in the school office or health services office and available to teachers and coaches. From a legal perspective, it is recommended that the asthma management plan include parental permission for the plan to be shared with relevant school personnel to avoid possible violations of the Family Education Rights and Privacy Act of 1974 (FERPA), which prohibits the unauthorized disclosure of confidential information in education records (including school health records in most cases).[77,78] However, under FERPA education records may be released to school officials without written consent of students' parents, including to teachers within the educational institution or local education agency, who have a "legitimate educational interest."[79] Under FERPA, it is important to note a narrow emergency exception whereby a school may disclose personally identifiable information to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student.[77,80]

OVERCOMING POTENTIAL DISADVANTAGES

Although many advantages to self-medication exist, families and schools need to recognize some theoretically possible disadvantages of students' being responsible for carrying and administering their own medication. These disadvantages can be minimized, however. First, students may unintentionally leave their inhalers at home or misplace their inhalers at school. One possible solution is to keep a spare inhaler in a school nurse's office or health room.

Second, self-medication may make it more difficult for the school to keep medication records. Such documentation ensures that medication adherence can be communicated to parents and children's health care providers; documentation might be required as part of an IEP or Section 504 plan or might be recommended by school boards as a way to monitor the health and safety of students. To solve this problem, schools could require that students report each inhaler use to a school nurse or record each medication use in a diary.

Third, students may not be well educated about when to take their medications,[8,81] may be embarrassed to take their medications in front of peers,[8] or may lack the maturity to use their medications appropriately (e.g., most elementary school students). Health care providers and parents are primarily responsible for teaching children about administering asthma medications and determining on a case-by-case basis whether the student has reached a level of maturity necessary for self-medication. School-based programs can supplement student education by helping students with asthma understand their disease and the importance of asthma self-management[82,85] as well as destigmatize the need for using asthma inhalers during the school day.[83]

CONCLUSION

Not all students with asthma have their asthma under good control.[1,4] Patient education and medical management about the proper use of asthma medication are crucial to preventing asthma morbidity and mortality.[86,87] For optimal asthma management, it is important that students with asthma not be denied appropriate access to their medications in school.[5,6,11,88,89] Many states have laws or policies that allow students to self-medicate with asthma inhalers at school (there is no evidence on whether state laws or polices are more effective to ensure immediate access for students in schools). In addition, 3 federal laws require schools to accommodate students whose asthma qualifies as a disability under IDEA, Section 504, or Title II of ADA. Such accommodations may include allowing students to carry their asthma inhalers so they can self-medicate as indicated in their asthma management plan. Of note, the US Department of Education, Office of Safe and Drug-Free Schools has issued guidance clarifying that "a student's prescription drugs, and related equipment, are not illegal drugs and are not prohibited by the [Safe and Drug-Free Schools and Communities Act]."[90]

Although these laws and policies are important, they cannot provide an individualized answer to asthma management. Ideally, parents or guardians, the child's health care provider, and school personnel, including the school nurse, will work together as a team to determine the best way to manage a student's asthma in school. Table 2 outlines some factors that should be considered in determining the appropriateness of self-carrying and self-administering inhalers in school. For example, whether a child with asthma should be permitted to self-medicate ought to be determined on a case-by-case basis, based on a child's abilities and interest and maturity and the situation at the school. When that team deems the child skilled and mature enough, the student with

TABLE 2—Elements to Consider When Determining Appropriateness of Self-Carrying and Self-Administering of Inhaler Medication in Schools

Student factors
- Asthma severity and morbidity (hospitalizations, emergency department visits, severe episodes, types of triggers)
- Student's asthma knowledge, attitude, skills, and behavior (awareness of asthma signs and symptoms, desire to self-carry inhaler, willingness to self-administer and report use of inhaler, understanding of importance of not sharing inhaler with other students, correct peak flow and inhaler technique)
- History of asthma episodes at school
- Adherence to school rules regarding medication administration
- Inhaler self-carrying experience in other settings (child care, camp, after-school care, at friends' homes)

Family factors
- Desire of parents/guardians for student to self-carry and self-administer medications with an inhaler
- Collaboration of parents/guardians with school team; permission for physician and school to share information

School factors
- Health staff availability (whether or not there are full-time school nurses or health assistants)
- School size (whether or not there is quick and easy access to health room)
- Ability to reduce student's triggers at school
- Proximity and availability of inhalers from local emergency medical services

Health care provider factors
- Completion of physician's or other health care provider's written asthma management plan and all required forms
- Student's education by physician or other health care provider about asthma generally, controlling asthma, and proper use of inhalers, spacers, and peak flow meters
- Assessment by physician or other health care provider of student's technique for inhaler, spacer, and peak flow meter use

asthma should be allowed to keep asthma inhalers in his or her possession[11,88] to reduce the chances of a full-blown asthma episode, asthma-related school absences, and the need for emergency medical care.[8,86,87] Some students may not want or need to carry their inhalers, for example, when the school building is very small and health staff are available during all school hours. Each student needs individual assessment as part of the implementation of that student's personal asthma management plan.

In some circumstances, parents may need assistance from the child's physician or other health care provider in advocating for the student to gain the right to self-carry an asthma inhaler. By knowing the rights of students with asthma, physicians and other health care providers can help ensure that students have appropriate access to medications at school. An informed health care provider can bring to the attention of school administrators and educators, as well as parents, the legal requirements of schools with students with asthma, and the benefits of self-administration and adequate control of asthma (e.g., improved health and fewer school absences). For example, health care providers can obtain parental permission to send a written asthma management plan to schools including specific guidance about the student's skill and maturity regarding self-administering the asthma inhaler. They can personally contact the principal if there is reluctance to permit self-carrying of inhalers. Students are more likely to be able to control their asthma when school personnel, parents or guardians, and health care providers know about disability laws and about appropriate asthma management. ■

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This article was accepted November 19, 2004.

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S. Everett Jones collected, analyzed, and synthesized the literature and wrote the article. L. Wheeler assisted in synthesizing the literature and contributed to the writing the article.

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Allergy & Asthma Network
Mothers of Asthmatics

March 1, 2005

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

Dear Representative Meyer:

Thank you again for championing students' rights in Alaska. As someone living with asthma, you can appreciate the frightening and potentially fatal consequences restricting medication access can produce. While we greatly appreciate your efforts to protect all students, including those with asthma and anaphylaxis, AANMA has strong concerns about two sections of HB85. However, we feel it can easily be adjusted to garner more widespread support for the measure.

Section C(4)(c) and (d) state: (c) "A pupil who is permitted to self-administer medication under this section shall be permitted to carry an inhaler or auto-injectable epinephrine, or both, at all 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.

Rather than including the language above, thereby endangering a student's right to immediate access of this medication, AANMA has found the following language effective in other states addressing these concerns:

"If a student uses his/her prescribed medication in a manner other than as prescribed, disciplinary action according to school codes may be imposed upon him/her. The imposed disciplinary action cannot limit or restrict the students' immediate access to his/her prescribed medication."

This permits schools to discipline students, without endangering their lives and protects a student from misinterpretation by non-medical professionals who may not understand *how or when* to use an inhaler. For instance, when a student primes their inhaler, which is correct, a teacher or bus driver could misinterpret the action and start a cascade of events including confiscating the inhaler at a time of need.

If a student in a wheelchair purposely runs over the foot of another student, the wheelchair is not removed. But instead normal discipline procedures are followed. In the case of a child with asthma, disciplinary action impeding immediate access can equate to a death sentence.

We hope you will consider this replacement language and remove the potentially life-threatening portion. We are currently working with states to correct language that allows for this confiscation, and will be working with Hawaii legislators to remove this section from their law as well. If you have any questions please contact Marissa (800-878-4403 x115, mmagnetti@aanma.org) or Sandra (800-729-3804, sfwalker@aanma.org).

Thank you for your efforts to protect students with asthma and anaphylaxis.

Sincerely,

Marissa Magnetti

Sandra Fusco-Walker

HB

88

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: January 19, 2005 **FURTHER REFERRALS: Finance**

Date of Committee Action: February 16, 2005

The JUDICIARY Committee considered: **HB 88**

HOUSE BILL NO. 88 **OFFENSES BY MINORS/AGAINST TEACHERS**

"An Act relating to certain weapons offenses involving minors; to aggravating factors in sentencing for certain offenses committed against a school employee; and providing for an effective date."

Recommends it be replaced with [ ] HCS *or* [X] CS *for* HB 88 (JUD)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ [ ] Same Title [X] New Title

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LEG
LAW
LWF
MVA
D R
DPS
REV
DOT
UA

NEW **FISCAL NOTES** *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero

PREVIOUS **FISCAL NOTES**				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
HSS	1			✓
LAW	2			✓

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
Tom Anderson	ANDERSON			X	
Mary Kay Hamilton	Hamilton	✓			
Pete Kott	KOTT			X	
John Coghill	Coghill			✓	
Bill Stoltze	Stoltze			X	
Craig Gabrielle	GARA			✓	
Chair: Les Gara	McClure			X	
Chair:					

CS FOR HOUSE BILL NO. 88(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

"An Act relating to certain weapons offenses involving minors; to aggravating factors in sentencing for certain offenses committed on school grounds, on a school bus, at a school-sponsored event, or in administrative offices of a school district; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

SHORT TITLE. This Act may be known as the School Violence Prevention Act of 2005.

*** Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to read:

FINDINGS AND INTENT. (a) The legislature finds that

(1) violent crime among the state's youth is of concern to Alaskans;

(2) the Department of Health and Social Services conducted a youth risk

behavior survey and found the following:

(A) 29.8 percent of male students in this state responding to the survey reported carrying a weapon; this figure is higher than the national average;

(B) 11.8 percent of male students in this state responding to the survey reported carrying a weapon, such as a gun, knife, or club, on school property within the 30 days before taking the survey; this figure is higher than the national average;

(C) nearly 11 percent of high school students in this state responding to the survey reported having been threatened or injured with a weapon, such as a gun, knife, or club, on school grounds within the 12 months before taking the survey; and

(3) in 2003, 13 percent of students responding to a survey by the Anchorage School District reported feeling unsafe at school; this figure is more than double the average percentage of students nationwide who felt unsafe at school.

(b) It is the intent of the legislature to further the important state interest of deterring misconduct involving weapons by certain minors, and in discouraging crime in the schools of this state.

*** Sec. 3.** AS 12.55.155(c) is amended by adding a new paragraph to read:

(31) the offense is a violation of AS 11.41 or AS 11.46.400 and the defendant directed the conduct constituting the offense against a person while the person was on school grounds, on a school bus, at a school-sponsored event, or in the administrative offices of a school district; in this paragraph,

(A) "school bus" has the meaning given in AS 11.71.900;

(B) "school district" has the meaning given in AS 47.07.063;

(C) "school grounds" has the meaning given in AS 11.71.900.

*** Sec. 4.** AS 47.12.030(a) is amended to read:

(a) When a minor who was at least 16 years of age at the time of the offense is charged by complaint, information, or indictment with an offense specified in this subsection, this chapter and the Alaska Delinquency Rules do not apply to the offense for which the minor is charged or to any additional offenses joinable to it under the applicable rules of court governing criminal procedure. The minor shall be charged, held, released on bail, prosecuted, sentenced, and incarcerated in the same manner as an adult. If the minor is convicted of an offense other than an offense specified in this

subsection, the minor may attempt to prove, by a preponderance of the evidence, that the minor is amenable to treatment under this chapter. If the court finds that the minor is amenable to treatment under this chapter, the minor shall be treated as though the charges had been heard under this chapter, and the court shall order disposition of the charges of which the minor is convicted under AS 47.12.120(b). The provisions of this subsection apply when the minor is charged by complaint, information, or indictment with an offense

(1) that is an unclassified felony or a class A felony and the felony is a crime against a person;

(2) of arson in the first degree; [OR]

(3) that is a class B felony and the felony is a crime against a person in which the minor is alleged to have used a deadly weapon in the commission of the offense and the minor was previously adjudicated as a delinquent or convicted as an adult, in this or another jurisdiction, as a result of an offense that involved use of a deadly weapon in the commission of a crime against a person or an offense in another jurisdiction having elements substantially identical to those of a crime against a person, and the previous offense was punishable as a felony; in this paragraph, "deadly weapon" has the meaning given in AS 11.81.900(b); **or**

(4) that is misconduct involving weapons in the

(A) first degree under

(i) AS 11.61.190(a)(1); or

(ii) AS 11.61.190(a)(2) when the firearm was discharged under circumstances manifesting substantial and unjustifiable risk of physical injury to a person; or

(B) second degree under AS 11.61.195.

*** Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. Sections 3 and 4 of this Act apply to acts committed on or after the effective date of this Act.

*** Sec. 6.** This Act takes effect July 1, 2005.

ALASKA STATE LEGISLATURE

State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

House Judiciary Committee

Memorandum

To: Leg. Legal

From: Vanessa Tondini, Committee Aide
House Judiciary Committee

Date: February 16, 2005

Re: [illegible] Request

Please create a final draft House Judiciary Committee Substitute for work order # 24-GH1096\A, HB 88, incorporating the attached two amendments (24-GH1096\A.1 and 24-GH1096\A.3). The bill was passed out of committee today.

If you have any questions, please call me at 4990.
Thank you!

24-GH1096\A.1
Luckhaupt
2/7/05

AMENDMENT #1 - PASSED

OFFERED IN THE HOUSE BY REPRESENTATIVE GRUENBERG

TO: HB 88

Page 1, line 2:

Delete "**against a school employee**"

Insert "**on school grounds, on a school bus, at a school-sponsored event, or in administrative offices of a school district**"

Page 2, lines 16 - 18:

Delete all material and insert:

"(31) the offense is a violation of AS 11.41 or AS 11.46.400 and the defendant directed the conduct constituting the offense against a person while the person was on school grounds, on a school bus, at a school-sponsored event, or in the administrative offices of a school district; in this paragraph,

(A) "school bus" has the meaning given in AS 11.71.900;

(B) "school district" has the meaning given in AS 47.07.063;

(C) "school grounds" has the meaning given in AS 11.71.900."

24-GH1096\A.3
Luckhaupt
2/8/05

AMENDMENT #2 - PASSED

OFFERED IN THE HOUSE BY REPRESENTATIVE GARA

TO: HB 88

Page 3, lines 14 - 15:

Delete all material and insert:

"**(4) that is misconduct involving weapons in the**

(A) first degree under

(i) AS 11.61.190(a)(1); or

(ii) AS 11.61.190(a)(2) when the firearm was discharged under circumstances manifesting substantial and unjustifiable risk of physical injury to a person; or

(B) second degree under AS 11.61.195."

(2) no person suffered physical injury as a result of the presence of the substance on the highway.

(c) Obstruction of highways is a class B misdemeanor. (§ 7 ch 166 SLA 1978)

Collateral references. — 39 Am. Jur. 2d, Highways, Streets and Bridges, §§ 175, 189, 190, 194, 253, 257, 279, 283-294, 297-303, 305-307.

40 C.J.S., Highways, §§ 221-231.

Sec. 11.61.160. Recruiting a gang member in the first degree. (a) A person commits the crime of recruiting a gang member in the first degree if the person uses or threatens the use of force against a person or property to induce a person to participate in a criminal street gang or to commit a crime on behalf of a criminal street gang.

(b) Recruiting a gang member in the first degree is a class C felony. (§ 2 ch 60 SLA 1996)

Sec. 11.61.165. Recruiting a gang member in the second degree. (a) A person commits the crime of recruiting a gang member in the second degree if the person is 18 years of age or older and, without force or the threat of force, encourages or recruits a person who is under 18 years of age and at least three years younger than the offender to participate in a criminal street gang.

(b) Recruiting a gang member in the second degree is a class A misdemeanor. (§ 2 ch 60 SLA 1996)

Article 2. Weapons and Explosives.

Collateral references. — 31A Am. Jur. 2d, Explosions and Explosives, §§ 214, 216, 219-223, 225-228, 232, 233, 235, 237, 238, 245-250; 79 Am. Jur. 2d, Weapons and Firearms, §§ 1-34.

35 C.J.S., Explosives, § 1 et seq; 94 C.J.S., Weapons, §§ 9-51.

Validity and construction of gun control laws, 28 ALR3d 845; 86 ALR4th 931; 37 ALR Fed. 696; 60 ALR Fed. 305; 125 ALR Fed. 613.

Validity of state statutes restricting right of aliens to bear arms, 28 ALR4th 1096.

Sufficiency of evidence of possession in prosecution under statute prohibiting persons under indictment for or convicted of crime from acquiring, having, carrying or using firearms or weapons, 43 ALR4th 788.

Validity of state statute proscribing possession or carrying of knife, 47 ALR4th 651.

Sec. 11.61.190. Misconduct involving weapons in the first degree. (a) A person commits the crime of misconduct involving weapons in the first degree if the person

(1) uses or attempts to use a firearm during the commission of an offense under AS 11.71.010 — 11.71.040; or

(2) discharges a firearm from a propelled vehicle while the vehicle is being operated and under circumstances manifesting substantial and unjustifiable risk of physical injury to a person or damage to property.

(b) Misconduct involving weapons in the first degree is a class A felony. (§ 10 ch 79 SLA 1992; am § 3 ch 60 SLA 1996)

NOTES TO DECISIONS

Offense required proof of both specified conduct and a specified result. — The State was required to prove two different culpable mental states; offense required proof of a particular type of conduct: knowing discharge of a firearm from an operated vehicle, proof was also required that defendant's conduct created a specified result: the risk of physical injury to a person or damage to property. Smith v. State, 28 P.3d 323 (Alaska Ct. App. 2001).

Sentence. — A five-year presumptive term applied to first felony offenders convicted of first-degree weapons misconduct as the legislature could not have intended to impose a seven-year presumptive term when a drive-by shooting endangered a person but a lesser five-year presumptive term if the shooting resulted in death. Smith v. State, 28 P.3d 323 (Alaska Ct. App. 2001).

Collateral references. — What constitutes "constructive possession" of unregistered or otherwise prohibited weapon under state law. 88 ALR5th 121.

Sec. 11.61.195. Misconduct involving weapons in the second degree. (a) A person commits the crime of misconduct involving weapons in the second degree if the person knowingly

(1) possesses a firearm during the commission of an offense under AS 11.71.010 — 11.71.040;

(2) violates AS 11.61.200(a)(1) and is within the grounds of or on a parking lot immediately adjacent to

(A) a public or private preschool, elementary, junior high, or secondary school without the permission of the chief administrative officer of the school or district or the designee of the chief administrative officer; or

(B) a center, other than a private residence, licensed under AS 47.33 or AS 47.35 or recognized by the federal government for the care of children; or

(3) discharges a firearm at or in the direction of

(A) a building with reckless disregard for a risk of physical injury to a person; or

(B) a dwelling.

(b) Misconduct involving weapons in the second degree is a class B felony. (§ 10 ch 79 SLA 1992; am § 1 ch 124 SLA 1994; am § 2 ch 130 SLA 1994; am § 1 ch 89 SLA 1997; am § 3 ch 58 SLA 1999; am § 3 ch 99 SLA 2004)

Effect of amendments. — The 1999 amendment, effective July 1, 2000, inserted a section reference in subparagraph (a)(2)(B).

The 2004 amendment, effective June 26, 2004, deleted "AS 14.37" following "licensed under" in paragraph (a)(2)(B), and made related changes.

NOTES TO DECISIONS

Nexus between firearm possession and drug offense. — Paragraph (a)(1) requires proof of a nexus between a defendant's possession of the firearm and the defendant's commission of the felony drug offense. Collins v. State, 977 P.2d 741 (Alaska Ct. App. 1999).

Convictions for possession of a firearm during the commission of a felony drug offense requires proof of a nexus between a defendant's possession of a firearm and the defendant's commission of the felony drug offense; therefore, where the state never presented evidence of this element of the offense to the grand jury and the trial jury never was asked to evaluate this evidence at trial, there was no basis to sustain the convictions. Lewis v. State, 9 P.3d 1028 (Alaska Ct. App. 2000).

Paragraph (a)(1) requires proof of a nexus between a defendant's possession of the firearm and the defendant's commission of the felony drug offense, and the court's findings must demonstrate that the state proved the nexus. Murray v. State, 12 P.3d 784 (Alaska Ct. App. 2000).

Where the trial court's instruction did not allow the jury to consider the nexus element of the felony drug offense and possession or exercise of control over a firearm, the error was not harmless beyond a reasonable doubt; a jury reasonably could have found no connection between defendant's possession of marijuana and his possession of the firearms, and accordingly, the appellate court reversed defendant's conviction of second-degree misconduct involving a weapon. Maness v. State, 49 P.3d 1128 (Alaska Ct. App. 2002).

Because AS 11.61.195(a)(1) requires proof of a nexus between defendant's possession of the firearm and his commission of the felony drug offense, and the fact that the firearm and drugs were located in the same house was insufficient to establish it, the appellate court remanded for reconsideration of the nexus issue. Murray v. State, 54 P.3d 821 (Alaska Ct. App. 2002).

Collateral references. structive possession" of u prohibited weapon under s

Sec. 11.61.200. Mi son commits the crim

(1) knowingly poss having been convicte would constitute a fel United States, or a co

(2) knowingly sells a person who has beer States, or a court of a

(3) manufactures, p

(4) knowingly sells condition is substantia or controlled substanc

(5) removes, covers, with intent to render

(6) possesses a firea covered, altered, or d covered, altered, or de

(7) violates AS 11.46 when the person's phys of an intoxicating liqu

(8) violates AS 11.46 or in a propelled vehic 18.66.100 — 18.66.180 the violation, possesses an ordinary pocketknif

(9) communicates in communication, posses than an ordinary pock

(10) resides in a dwel one's person or a prohib felony by a court of this territory, unless the per is a concealable weapon tion or from the head dwelling is located;

(11) discharges a fire in circumstances other

(12) knowingly posse convicted of a felo or a felony if committed by a court of another state

(b) It is an affirmativ

(1) under (a)(1) of thi

(A) the person convic pardon for that convicti

(B) the underlying co AS 12.55.085 or as a re

(C) a period of 10 y unconditional discharge

Vanessa Tondini

From: Harvey, Tom [AK] [Tom.Harvey@neaalaska.org]

Sent: Monday, February 14, 2005 11:07 AM

To: Rep. Kevin Meyer; Rep. Bruce Weyhrauch

Cc: Rep. Lesil McGuire; Rep. Bob Lynn; Alcantra, John [AK]; Bjork, Bill [AK]

Subject: Assault on Public School Employees

Rep. Meyer & Rep. Weyhrauch,

Per my brief conversations with you on Friday, I am forwarding to you language that would address the issue of school bus drivers, who are contracted by school districts and therefore not employees of the district. In talking with Rep. McGuire on Saturday at the Anchorage Caucus meeting, I understand that she has had the language put in the bill. NEA-Alaska supports the amendment and CSHB41.

The language to clarify the issue is : "against a school employee or an individual who has been authorized by the school district to provide pupil services." This language would cover the contracted school bus drivers and other personnel, who are contracted to provide pupil services, such as school psychologists.

Please call if you have any questions.

Tom Harvey
NEA-Alaska Executive Director
1-800-996-3225, ext. 527
1-907-274-0551 (FAX)
Advocating for public education that achieves excellence and equity for every Alaskan child.

STATE OF ALASKA

DEPARTMENT OF LAW
CRIMINAL DIVISION

FRANK H. MURKOWSKI
GOVERNOR

District Attorney's Office
310 K Street, Suite 520
Anchorage, Alaska 99501

Telephone: (907) 269-6300
Fax: (907) 269-6321

February 16, 2005

Representative Lesil McGuire
Chair, House Judiciary Committee
Alaska Legislature
State Capitol, Room 118
Juneau, AK 99801-1182

Re: H.B. 88 – automatic waiver of juveniles for weapons offenses

Dear Committee Chair:

During my testimony in support of the bill automatically waiving juveniles ages 16 and 17 to adult court for misconduct involving weapons in the first and second degrees, some committee members asked whether prosecutors had had difficulty utilizing discretionary waiver in juvenile cases. I have gathered information regarding our experience with discretionary waiver and I am writing to respond to those questions.

Since 2001, the prosecutors in juvenile cases in the Anchorage office of the Attorney General or the District Attorney have tried to use the discretionary waiver provisions of juvenile law in four cases. We were unsuccessful in three of the four. Two of the three unsuccessful applications were in murder cases; one was in an attempted murder case.

The four details of the four cases are as follows.

R.B. was a fourteen-year-old Anchorage resident who participated in the murder of Rachael Peace. While his eighteen-year-old accomplice strangled her to death, R.B. held his hand over Rachael Peace's mouth and nose. R.B. did not know Rachael Peace prior to night of her murder. R.B. and his co-defendant later attempted to destroy the evidence of the crime by burning Rachael Peace's body at Crow Creek Pass near Girdwood, Alaska. The Division of Juvenile Justice in consultation with the Department

of Law filed a petition to waive juvenile jurisdiction. Superior Court Judge Dan Hensley declined to waive juvenile jurisdiction.

J.W. was a sixteen-year-old from Kenai, Alaska, who got engaged in a verbal argument with the driver of a truck and, as the truck drove away, pulled a .357 out of his back pack and fired three shots at the driver. The shots struck the back of the cab of the truck. One bullet lodged behind the driver's seat but did not penetrate any further. Two other bullets passed through the rear window of the truck. One of those bullets lodged in the passenger doorframe, almost striking the passenger. No one was hurt during the incident. A petition to waive juvenile jurisdiction was filed in Kenai. Superior Court Judge Hal Brown declined to waive juvenile jurisdiction.

P.T. was a fifteen-year-old Anchorage teenager who participated in the robbery and murder of Anchorage businesswoman Chong Cho. Three robbers, two adults and P.T., robbed Ms. Cho of the day's receipts from her restaurant as she returned home from work. One of the robbers shot in the head, killing her. Police did not have evidence identifying which of the three robbers did the shooting. A petition to waive juvenile jurisdiction was filed by the Division of Juvenile Justice and the Department of Law. Superior Court Judge John Reese declined to waive juvenile jurisdiction.

B.K. was a fifteen-year-old in Pilot Point, who shot his cousin in the head with a .22 rifle and sexually assaulted her as she lay dying. A petition to waive juvenile jurisdiction was filed. Superior Court Judge Fred Torissi waived juvenile jurisdiction.

Since judges would not waive juvenile jurisdiction in three out of four murder or attempted murder cases, we do not believe we would be successful in seeking discretionary waiver in a case of a drive-by shooting, in which no one has actually been injured. If you would like any additional information regarding these cases, please let me know.

Sincerely,

SCOTT J. NORDSTRAND
ACTING ATTORNEY GENERAL

By: Bob Linton

Leonard M. Linton, Jr.
District Attorney