

HB 63 - AS AMENDED BY THE HOUSE

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HOUSE BILL

63

AN ACT relative to the use of nasal spray to treat anaphylaxis.

SPONSORS: Rep. Layon, Rock. 13; Rep. B. Boyd, Hills. 12; Rep. Nagel, Belk. 6; Rep. Grote, Rock. 24; Rep. Kofalt, Hills. 32; Rep. Maggiore, Rock. 23; Rep. McGhee, Hills. 35; Rep. Palmer, Sull. 2; Sen. Pearl, Dist 17; Sen. Prentiss, Dist 5

COMMITTEE: Health, Human Services and Elderly Affairs

ANALYSIS

This bill allows authorized entities, including schools, camps, and day care facilities, to possess and administer epinephrine nasal spray to treat anaphylaxis. The law currently permits epinephrine administration through auto-injectors.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struckthrough]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Five

AN ACT relative to the use of nasal spray to treat anaphylaxis.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Recreational Camp Licensing; Possession and Use of Epinephrine Auto-Injectors at Recreation
2 Camps; Possession and Use of Epinephrine Nasal Spray Added. Amend RSA 170-E:59 - 170-E:62 to
3 read as follows:

4 170-E:59 Possession and Use of Epinephrine Auto-Injectors **and Epinephrine Nasal Spray** at
5 Recreation Camps. A recreation camp shall permit a child with severe, potentially life-threatening
6 allergies to possess and use an epinephrine auto-injector **or epinephrine nasal spray**, if the
7 following conditions are satisfied:

8 I. The child has the written approval of the child's physician and the written approval of the
9 parent or guardian. The camp shall obtain the following information from the child's physician:

- 10 (a) The child's name.
- 11 (b) The name and signature of the licensed prescriber and business and emergency
12 numbers.
- 13 (c) The name, route, and dosage of medication.
- 14 (d) The frequency and time of medication administration or assistance.
- 15 (e) The date of the order.
- 16 (f) A diagnosis and any other medical conditions requiring medications, if not a violation
17 of confidentiality or if not contrary to the request of the parent or guardian to keep confidential.
- 18 (g) Specific recommendations for administration.
- 19 (h) Any special side effects, contraindications, and adverse reactions to be observed.
- 20 (i) The name of each required medication.
- 21 (j) Any severe adverse reactions that may occur to another child, for whom the
22 epinephrine auto-injector **or epinephrine nasal spray** is not prescribed, should such a child receive
23 a dose of the medication.

24 II. The recreational camp administrator or, if a nurse is assigned to the camp, the nurse
25 shall receive copies of the written approvals required by paragraph I.

26 III. The child's parent or guardian shall submit written verification from the physician
27 confirming that the child has the knowledge and skills to safely possess and use an epinephrine
28 auto-injector **or epinephrine nasal spray** in a camp setting.

29 IV. If the conditions provided in this section are satisfied, the child may possess and use the
30 epinephrine auto-injector **or epinephrine nasal spray** at the camp or at any camp-sponsored
31 activity, event, or program.

V. In this section, "physician" means any physician or health practitioner with the authority to write prescriptions.

170-E:60 Use of Epinephrine Auto-Injector *or Epinephrine Nasal Spray*. Immediately after using the epinephrine auto-injector *or epinephrine nasal spray*, the child shall report such use to the nurse or another camp employee to enable the nurse or camp employee to provide appropriate follow-up care.

170-E:61 Availability of Epinephrine Auto-Injector *or Epinephrine Nasal Spray*. The recreational camp nurse or, if a nurse is not assigned to the camp, the recreational camp administrator shall maintain for the use of a child with severe allergies at least one epinephrine auto-injector *or epinephrine nasal spray*, provided by the child or the child's parent or guardian, which shall be readily accessible to the recreational camp staff caring for children requiring such medications.

170-E:62 Immunity. No recreational camp or camp employee shall be liable in a suit for damages as a result of any act or omission related to a child's use of an epinephrine auto-injector *or epinephrine nasal spray* if the provisions of RSA 170-E:59 have been met, unless the damages were caused by willful or wanton conduct or disregard of the criteria established in that section for the possession and self-administration of an epinephrine auto-injector *or epinephrine nasal spray* by a child.

2 Education; Pupil Use of Epinephrine Auto-Injectors; Epinephrine Nasal Spray Added. Amend the subdivision heading preceeding RSA 200:42 and RSA 200:42 - 200:45 to read as follows:

Pupil Use of Epinephrine Auto-Injectors *and Epinephrine Nasal Spray*

200:42 Possession and Use of Epinephrine Auto-Injectors *and Epinephrine Nasal Spray* Permitted. A pupil with severe, potentially life-threatening allergies may possess and self-administer an epinephrine auto-injector *or epinephrine nasal spray* if the following conditions are satisfied:

I. The pupil has the written approval of the pupil's physician and, if the pupil is a minor, the written approval of the parent or guardian. The school shall obtain the following information from the pupil's physician:

- (a) The pupil's name.
- (b) The name and signature of the licensed prescriber and business and emergency numbers.
- (c) The name, route, and dosage of medication.
- (d) The frequency and time of medication administration or assistance.
- (e) The date of the order.
- (f) A diagnosis and any other medical conditions requiring medications, if not a violation of confidentiality or if not contrary to the request of the parent or guardian to keep confidential.
- (g) Specific recommendations for administration.

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(h) Any special side effects, contraindications, and adverse reactions to be observed.

(i) The name of each required medication.

(j) Any severe adverse reactions that may occur to another pupil, for whom the epinephrine auto-injector **or epinephrine nasal spray** is not prescribed, should such a pupil receive a dose of the medication.

II. The school principal or, if a school nurse is assigned to the pupil's school building, the school nurse shall receive copies of the written approvals required by paragraph I.

III. The pupil's parent or guardian shall submit written verification from the physician confirming that the pupil has the knowledge and skills to safely possess and use an epinephrine auto-injector **or epinephrine nasal spray** in a school setting.

IV. If the conditions provided in this section are satisfied, the pupil may possess and use the epinephrine auto-injector **or epinephrine nasal spray** at school or at any school-sponsored activity, event, or program.

V. In this section, "physician" includes any physician or health practitioner with the authority to write prescriptions.

200:43 Use of Epinephrine Auto-Injector **or Epinephrine Nasal Spray**. Immediately after using the epinephrine auto-injector **or epinephrine nasal spray** during the school day, the pupil shall report to the nurse's office or principal's office to enable the nurse or another school employee to provide appropriate follow-up care.

200:44 Availability of Epinephrine Auto-Injector **or Epinephrine Nasal Spray**. The school nurse or, if a school nurse is not assigned to the school building, the school principal shall maintain for a pupil's use at least one epinephrine auto-injector **or epinephrine nasal spray**, provided by the pupil, in the nurse's office or in a similarly accessible location.

200:44-a Anaphylaxis Training Required.

I.(a) Designated assistive personnel shall complete an anaphylaxis training program prior to providing or administering an epinephrine auto-injector **or epinephrine nasal spray** at least every 2 years following completion of the initial anaphylaxis training program. Such training shall be conducted based on resources provided by the National Association of School Nurses, the Food and Allergy Anaphylaxis Network, or the New Hampshire School Nurses' Association. Training shall be conducted online or in person and, at a minimum, shall cover:

(1) Techniques on how to recognize symptoms of severe allergic reactions, including anaphylaxis.

(2) Standards and procedures for the storage and administration of an epinephrine auto-injector **and epinephrine nasal spray**.

(3) Emergency follow-up procedures.

(b) The school nurse conducting the anaphylaxis training shall maintain a list of individuals who have successfully completed the anaphylaxis training program.

II. Not later than January 1, 2017, the department of education, in consultation with the New Hampshire School Nurses' Association, shall develop and make available to all schools guidelines for the management of students with life-threatening allergies. The guidelines shall include, but not be limited to implementation of the following by a school nurse: education and training for designated unlicensed assistive personnel on the management of students with life-threatening allergies, including training related to the administration of an epinephrine auto-injector **and epinephrine nasal spray**; procedures for responding to life-threatening allergic reactions; the development of individualized health care plans and allergy action plans for every student with a known life-threatening allergy; and protocols to prevent exposure to allergens. Not later than September 1, 2017, each school district, under the direction of a school nurse, shall implement a plan based on the guidelines developed pursuant to this section for the management of students with life-threatening allergies enrolled in the schools under its jurisdiction, and make such plan available to the public.

200:44-b Supply of Epinephrine Auto-Injectors **and Epinephrine Nasal Spray**.

I. A school board may authorize a school nurse who is employed by the school district and for whom the board is responsible to maintain a supply of epinephrine auto-injectors **and epinephrine nasal spray** for use in the event of an allergic emergency. The nurse shall determine the quantity of medication the school should maintain.

II. To obtain life-saving allergy medication for a school district, a health care practitioner may prescribe epinephrine auto-injectors **and epinephrine nasal spray** in the name of a school district for use in life-saving allergy emergency situations.

III. A pharmacist may dispense epinephrine auto-injectors **and epinephrine nasal spray** pursuant to a prescription issued in the name of a school. A school, under the direction of the school nurse, may maintain a supply of epinephrine auto-injectors **and epinephrine nasal spray** for use in accordance with this subdivision.

IV. A school may enter into an agreement with a manufacturer of epinephrine auto-injectors **or nasal spray**, third-party suppliers of epinephrine auto-injectors **or nasal spray**, or health care offices to obtain epinephrine auto-injectors **and epinephrine nasal spray** at no charge or at fair-market prices or at reduced prices. A school district may accept gifts, grants or donations from foundations, organizations, or private parties to purchase epinephrine auto-injectors **and epinephrine nasal spray**.

V. A school that possesses and makes available a supply of epinephrine ~~[auto-injectors]~~ pursuant to this subdivision shall maintain an annual report summarizing the use of the epinephrine auto-injectors **and epinephrine nasal spray**.

200:45 Immunity.

I. No school district, member of a school board, or school district employee shall be liable in a suit for damages as a result of any act or omission related to a pupil's use of an epinephrine auto-

injector ***or epinephrine nasal spray*** pursuant to RSA 200:43, if the provisions of RSA 200:42 have been met, unless the damages were caused by willful or wanton conduct or disregard of the criteria established in that section for the possession and self-administration of an epinephrine auto-injector ***or epinephrine nasal spray*** by a pupil.

II. No school that possesses and makes available epinephrine auto-injectors ***or epinephrine nasal spray***, member of its school board, school nurse, school district employee, agents or volunteers, no health care practitioner that prescribes epinephrine auto-injectors ***or epinephrine nasal spray*** to a school, and no person that conducts the training described in RSA 200:44-a shall be liable for damages as a result of the administration or self-administration of an epinephrine auto-injector ***or epinephrine nasal spray***, the failure to administer an epinephrine auto-injector ***or epinephrine nasal spray***, or any other act or omission related to the possession or use of an epinephrine auto-injector ***or epinephrine nasal spray***, unless the damages were caused by willful or wanton misconduct.

III. The administration of an epinephrine auto-injector ***or epinephrine nasal spray*** by designated school personnel pursuant to the provisions of this subdivision shall not require licensure.

IV. This section shall not be construed to eliminate, limit, or reduce any other immunity or defense that may be available under state law.

3 Epinephrine Administration in Postsecondary Educational Institutions and Independent Schools; Definition of Trained Designee. Amend RSA 200-N:1, V to read as follows:

V. "Trained designee" means a member of the campus community trained by a licensed campus medical professional in the emergency administration of auto-injectable epinephrine ***or an epinephrine nasal spray***.

4 Epinephrine Administration in Postsecondary Educational Institutions and Independent Schools; Emergency Administration Policies and Guidelines. Amend RSA 200-N:2 to read as follows:

200-N:2 Emergency Administration of Epinephrine; Policies and Guidelines.

I. A postsecondary educational institution or independent school accredited to operate in this state may develop a policy in accordance with this chapter and guidelines issued under RSA 200-N:4 for the emergency administration of auto-injectable epinephrine ***or epinephrine nasal spray*** to a member of the campus community for anaphylaxis when a licensed campus medical professional is not available.

II. Such policy shall include:

(a) Permission for a trained designee to do the following:

(1) Administer auto-injectable epinephrine ***or epinephrine nasal spray*** to a member of the campus community for anaphylaxis when a licensed campus medical professional is unavailable.

(2) When responsible for the safety of at least one member of the campus community, carry in a secure but accessible location a supply of auto-injectable epinephrine **and/or epinephrine nasal spray** that is prescribed under a standing protocol from a health care provider who is licensed in New Hampshire and whose scope of practice includes the prescribing of medication.

(b) Provisions that a licensed campus medical professional has responsibility for training designees in the following:

(1) The administration of **epinephrine nasal spray or** auto-injectable epinephrine.

(2) Identification of an anaphylactic reaction and indications for when to use epinephrine.

III. Each postsecondary educational institution and independent school that develops a policy under this chapter shall designate a licensed campus medical professional.

IV. A licensed campus medical professional may:

(a) Establish and administer a standardized training protocol for the emergency administration of epinephrine by trained designees.

(b) Ensure that trained designees have satisfactorily completed the training protocol.

(c) Obtain a supply of auto-injectable epinephrine **and/or epinephrine nasal spray** under a standing protocol from a physician licensed under RSA 329.

(d) Control distribution to trained designees of auto-injectable epinephrine **or epinephrine nasal spray**.

5 Epinephrine Administration in Postsecondary Educational Institutions and Independent Schools; Storage of Epinephrine. Amend RSA 200-N:5 and 200-N:6 to read as follows:

200-N:5 Storage of Epinephrine.

I. A postsecondary educational institution or independent school may fill a prescription for auto-injectable epinephrine **or epinephrine nasal spray** and store the **epinephrine nasal spray or** auto-injectable epinephrine on the campus if a licensed health care provider whose scope of practice includes the prescribing of medication writes the prescription for **epinephrine nasal spray or** auto-injectable epinephrine for the postsecondary educational institution or independent school.

II. The postsecondary educational institution or independent school shall store the **epinephrine nasal spray or** auto-injectable epinephrine in an unlocked safe location in which only postsecondary educational institution or independent school personnel have access.

III. A health care provider who is licensed in this state and whose scope of practice includes the prescribing of medication may write a prescription, drug order, or protocol for **epinephrine nasal spray or** auto-injectable epinephrine for the postsecondary educational institution or independent school.

IV. A pharmacist licensed under RSA 318 may dispense a valid prescription, drug order, or protocol for ***epinephrine nasal spray or*** auto-injectable epinephrine issued in the name of a postsecondary educational institution or an independent school.

200-N:6 Immunity From Civil Liability.

I. A licensed campus medical professional who acts in accordance with this chapter shall not be liable for civil damages for any act or omission committed in accordance with this chapter unless the act or omission constitutes gross negligence or willful misconduct.

II. A trained designee who administers ***epinephrine nasal spray or*** auto-injectable epinephrine in accordance with this chapter shall not be liable for civil damages resulting from the administration of ***epinephrine nasal spray or*** auto-injectable epinephrine under this chapter unless the act or omission constitutes gross negligence or willful misconduct.

III. A licensed health care provider who writes a prescription, drug order, or protocol under this chapter is not liable for civil damages resulting from the administration of ***epinephrine nasal spray or*** auto-injectable epinephrine under this chapter unless the act or omission constitutes gross negligence or willful misconduct.

IV. A licensed pharmacy, whether with a physical presence or doing business through mail order, that fulfills a prescription, drug order, or protocol under this chapter is not liable for civil damages resulting from the administration of ***epinephrine nasal spray or*** auto-injectable epinephrine under this chapter unless the act or omission constitutes gross negligence or willful misconduct.

6 Epinephrine Administration in Postsecondary Educational Institutions and Independent Schools; Applicability. Amend RSA 200-N:7, II and III to read as follows:

II. Prohibit the administration of a pre-filled auto-injector of epinephrine ***or an epinephrine nasal spray*** by a person acting under a lawful prescription.

III. Prevent a licensed health care provider from acting within the individual's scope of practice in administering ***epinephrine nasal spray or*** auto-injectable epinephrine.

7 Administration of Epinephrine; Use of Epinephrine Nasal Spray. Amend RSA 329:1-h to read as follows:

329:1-h Administration of Epinephrine.

I. In this section:

(a) "Administer" means the direct application of an epinephrine auto-injector ***or nasal spray*** to the body of an individual.

(b) "Authorized entity" means any entity or organization in which allergens capable of causing anaphylaxis may be present, including recreation camps and day care facilities. Authorized entity shall not include an elementary or secondary school or a postsecondary educational institution eligible to establish policies and guidelines for the emergency administration of epinephrine under RSA 200-N.

(c) "Epinephrine auto-injector" means a single-use device used for the automatic injection of a premeasured dose of epinephrine into the human body.

(d) "Health care practitioner" means a person who is lawfully entitled to prescribe, administer, dispense, or distribute controlled drugs.

(e) ***"Nasal spray" means a single-use, premeasured nasal spray or device to administer a dose of epinephrine into the human nose.***

(f) "Provide" means to furnish one or more epinephrine auto-injectors ***or nasal spray*** to an individual.

II. A health care practitioner may prescribe epinephrine auto-injectors ***or nasal spray*** in the name of an authorized entity for use in accordance with this section, and pharmacists and health care practitioners may dispense epinephrine auto-injectors ***or nasal spray*** pursuant to a prescription issued in the name of an authorized entity.

III. An authorized entity may acquire and maintain a supply of epinephrine auto-injectors ***and nasal spray*** pursuant to a prescription issued in accordance with this section. Such epinephrine auto-injectors ***and nasal spray*** shall be stored in a location readily accessible in an emergency and in accordance with the instructions for use, and any additional requirements that may be established by ***the*** board of medicine. An authorized entity shall designate employees or agents who have completed the training required by paragraph V to be responsible for the storage, maintenance, control, and general oversight of epinephrine auto-injectors ***or nasal spray*** acquired by the authorized entity.

IV. An employee or agent of an authorized entity, or other individual, who has completed the training required by paragraph V may use epinephrine auto-injectors ***and nasal spray*** pursuant to this section to:

(a) Provide an epinephrine auto-injector ***or nasal spray*** to any individual who the employee agent or other individual believes in good faith is experiencing anaphylaxis, or the parent, guardian, or caregiver of such individual, for immediate administration, regardless of whether the individual has a prescription for an epinephrine auto-injector ***or nasal spray*** or has previously been diagnosed with an allergy.

(b) Administer an epinephrine auto-injector ***or nasal spray*** to any individual who the employee, agent, or other individual believes in good faith is experiencing anaphylaxis, regardless of whether the individual has a prescription for an epinephrine auto-injector ***or nasal spray*** or has previously been diagnosed with an allergy.

V.(a) An employee, agent, or other individual described in paragraph IV shall complete an anaphylaxis training program at least every 2 years, following completion of the initial anaphylaxis training program. Such training shall be conducted by a nationally-recognized organization experienced in training unlicensed persons in emergency health care treatment or an entity or

individual approved by the board of medicine. Training may be conducted online or in person and, at a minimum, shall cover:

(1) How to recognize signs and symptoms of severe allergic reactions, including anaphylaxis;

(2) Standards and procedures for the storage and administration of an epinephrine auto-injector **or nasal spray**; and

(3) Emergency follow-up procedures.

(b) The entity or individual that conducts the training shall issue a certificate, on a form developed or approved by the board of medicine to each person who successfully completes the anaphylaxis training program.

VI. No authorized entity that possesses and makes available epinephrine auto-injectors **or nasal spray** and its employees, agents, and other individuals, or health care practitioner that prescribes or dispenses epinephrine auto-injectors **or nasal spray** to an authorized entity, or pharmacist or health care practitioner that dispenses epinephrine auto-injectors **or nasal spray** to an authorized entity, or individual or entity that conducts the training described in paragraph V, shall be liable for any injuries or related damages that result from any act or omission pursuant to this section, unless such injury or damage is the result of willful or wanton misconduct. The administration of an epinephrine auto-injector **or nasal spray** in accordance with this section shall not be considered to be the practice of medicine or any other profession that otherwise requires licensure. This section shall not be construed to eliminate, limit, or reduce any other immunity or defense that may be available under state law. An entity located in this state shall not be liable for any injuries or related damages that result from the provision or administration of an epinephrine auto-injector **or nasal spray** outside of this state if the entity would not have been liable for such injuries or related damages had the provision or administration occurred within this state, or is not liable for such injuries or related damages under the law of the state in which such provision or administration occurred.

8 Dealing In or Possessing Prescription Drugs. Amend RSA 318:42, VII-a(b) to read as follows:

(b) The possession and administration of epinephrine for the emergency treatment of anaphylaxis by licensed practical nurses or registered nurses employed or contracted by public school systems or by licensed campus medical professionals in postsecondary educational institutions or independent schools. ***A pharmacist may dispense epinephrine auto-injectors and epinephrine nasal spray pursuant to a prescription issued in the name of a school, postsecondary institution, or independent school. A school, under the direction of the school nurse, may maintain a supply of epinephrine auto-injectors and epinephrine nasal spray for use in accordance with RSA 200:44-b and RSA 200-N:5.***

9 Effective Date. This act shall take effect upon its passage.