



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-5262/1
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2021 SENATE BILL 706

November 19, 2021 - Introduced by Senators SMITH, AGARD, JOHNSON, LARSON and L. TAYLOR, cosponsored by Representatives VINING, SPREITZER, ANDRACA, BOWEN, CABRERA, EMERSON, GOYKE, HEBL, HESSELBEIN, HONG, OHNSTAD, POPE, SHANKLAND, SHELTON, SINICKI, SNODGRASS, STUBBS, SUBECK, TUSLER and VRUWINK. Referred to Committee on Health.

1 **AN ACT to amend** 450.13 (title); and **to create** 20.435 (1) (ck), 256.158 and 450.13
2 (5n) of the statutes; **relating to:** epinephrine for ambulances; therapeutic
3 interchange for drug products prescribed to counteract anaphylaxis; funding
4 for special education, the University of Wisconsin System, and the technical
5 college system; and making an appropriation.

Analysis by the Legislative Reference Bureau

This bill requires that the Department of Health Services reimburse ambulance service providers for a set of two epinephrine auto-injectors or a set of two draw-up epinephrine kits for each ambulance operating in the state. Under the bill, an ambulance service provider means an ambulance service provider that is a public agency, volunteer fire department, or nonprofit corporation. The bill also requires that, on an ongoing basis, DHS must, upon request, reimburse ambulance service providers for replacement sets of epinephrine auto-injectors or draw-up epinephrine kits. DHS may only reimburse ambulance service providers for epinephrine if each ambulance for which the ambulance service provider is reimbursed is staffed with an emergency medical service provider who is qualified to administer the epinephrine. The bill provides additional funding to the Department of Public Instruction for aids for special education and to the University of Wisconsin System and technical college system for purposes of maintaining compliance with maintenance of effort requirements of the federal Consolidated Appropriations Act and the federal American Rescue Plan Act.

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Also, for drug products prescribed to counteract anaphylaxis, this bill allows, if certain conditions are met, a pharmacist to substitute a drug product with another drug product that would, in the opinion of the pharmacist, have a substantially equivalent therapeutic effect even though the substitute drug product is *not* a drug product equivalent. The bill also provides that a pharmacist who dispenses a drug product for a patient in a hospital may, for a drug product prescribed to counteract anaphylaxis, under the same conditions applicable for drug product equivalents under current law, substitute a drug product with another drug product that would, in the opinion of the pharmacist, have a substantially equivalent therapeutic effect even though the substitute drug product is not a drug product equivalent. Current law defines a “drug product equivalent” as a drug product that is designated the therapeutic equivalent of another drug product by the federal Food and Drug Administration as set forth in the latest edition of the supplement to the federal Food and Drug Administration’s *Approved Drug Products with Therapeutic Equivalence Evaluations*, commonly known as the Orange Book. As with substitution of drug product equivalents under current law, the therapeutic substitutions allowed under the bill do not apply to biological products.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.435 (1) (ck) of the statutes is created to read:

2 20.435 (1) (ck) *Epinephrine for ambulances.* A sum sufficient for the
3 department of health services to reimburse ambulance service providers for
4 epinephrine under s. 256.158.

5 **SECTION 2.** 256.158 of the statutes is created to read:

6 **256.158 Epinephrine for ambulances. (1)** In this section:

7 (a) “Ambulance service provider” means an ambulance service provider that is
8 a public agency, volunteer fire department, or nonprofit corporation.

9 (b) “Draw-up epinephrine” means epinephrine that is administered
10 intramuscularly using a needle and syringe and drawn up from a vial or ampule.

11 (c) “Draw-up epinephrine kit” means a single-use vial or ampule of draw-up
12 epinephrine and a syringe for administration to a patient.

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1 (2) From the appropriation under s. 20.435 (1) (ck), the department shall
2 reimburse ambulance service providers for a set of 2 epinephrine auto-injectors or
3 a set of 2 draw-up epinephrine kits for each ambulance operating in the state. On
4 an ongoing basis, the department shall, upon request from an ambulance service
5 provider, reimburse the ambulance service provider for a replacement set of 2
6 epinephrine auto-injectors or a set of 2 draw-up epinephrine kits. The department
7 shall allow the ambulance service provider to choose between epinephrine
8 auto-injectors and draw-up epinephrine kits. The department may not reimburse
9 an ambulance service provider for epinephrine unless each ambulance for which the
10 ambulance service provider is reimbursed is staffed with an emergency medical
11 services practitioner who is qualified to administer the provided epinephrine.

12 **SECTION 3.** 450.13 (title) of the statutes is amended to read:

13 **450.13 (title) Using drug product equivalent in dispensing**
14 **prescriptions; therapeutic exchange for drug products prescribed to**
15 **counteract anaphylaxis.**

16 **SECTION 4.** 450.13 (5n) of the statutes is created to read:

17 **450.13 (5n) THERAPEUTIC INTERCHANGE FOR DRUGS COUNTERACTING ANAPHYLAXIS.**

18 (a) Notwithstanding subs. (1s) to (4), for a drug product prescribed to counteract
19 anaphylaxis, a pharmacist may substitute a drug product with another drug product
20 that would, in the opinion of the pharmacist, have a substantially equivalent
21 therapeutic effect even though the substitute drug product is not a drug product
22 equivalent, provided all of the following conditions are met:

23 1. A prescribing practitioner has not indicated, by writing on the face of the
24 prescription order or, with respect to a prescription order transmitted electronically,
25 by designating in electronic format that a substitution of the drug product prescribed

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1 may not be made under this subsection. If such indication is made, the pharmacist
2 shall dispense the prescription with the specific drug product prescribed.

3 2. The drug product substitution is intended to ensure formulary compliance
4 with the consumer's health insurance plan or, in the case of a consumer without
5 insurance, to lower the cost to the patient while maintaining safety.

6 3. The consumer opts in to the drug product substitution, and the pharmacist
7 clearly informs the consumer of the differences in the drug products and specifies
8 that the consumer may refuse the substitution.

9 (b) If a pharmacist substitutes a drug product prescribed to counteract
10 anaphylaxis under this subsection, the pharmacist must ensure that the prescriber's
11 directions and quantity are modified to allow for equivalent dispensing to what was
12 originally prescribed.

13 (c) Within 5 business days after the dispensing of a drug product substitute
14 under this subsection, the dispensing pharmacist or the pharmacist's designee shall
15 do one of the following:

16 1. Make an entry of the specific drug product provided to the patient, including
17 the name of the product and the manufacturer. Entry into an electronic records
18 system as described in this paragraph is presumed to provide notice to the
19 prescribing practitioner. The communication shall be conveyed by making an entry
20 that is electronically accessible to the prescribing practitioner through one of the
21 following:

22 a. An interoperable electronic medical records system.

23 b. An electronic prescribing technology.

24 c. A pharmacist benefit management system.

25 d. A pharmacy record.

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1 2. If a pharmacist is unable to make an entry as provided in subd. 1.,
2 communicate the drug product substitute dispensed to the prescribing practitioner
3 using facsimile, telephone, electronic transmission, or another prevailing means,
4 except that communication under this paragraph is not required if a refill of the drug
5 product is not changed from the product dispensed on the prior filling of the
6 prescription.

7 (d) Notwithstanding pars. (a) to (c), a pharmacist who dispenses a drug product
8 prescribed for a patient in a hospital may, for a drug product prescribed to counteract
9 anaphylaxis, substitute a drug product with another drug product that would, in the
10 opinion of the pharmacist, have a substantially equivalent therapeutic effect even
11 though the substitute drug product is not a drug product equivalent, if the
12 pharmacist dispenses the drug product substitute in accordance with written
13 guidelines or procedures previously established by a pharmacy and therapeutics
14 committee of the hospital and approved by the hospital's medical staff and use of the
15 drug product substitute has been approved for a patient during the period of the
16 patient's stay within the hospital by any of the following:

- 17 1. The patient's individual physician.
- 18 2. The patient's advanced practice nurse prescriber, if the advanced practice
19 nurse prescriber has entered into a written agreement to collaborate with a
20 physician.
- 21 3. The patient's physician assistant.

SECTION 5. Fiscal changes.

23 (1) SPECIAL EDUCATION AID; EPINEPHRINE FOR AMBULANCES. In the schedule under
24 s. 20.005 (3) for the appropriation to the department of public instruction under s.
25 20.255 (2) (b), the dollar amount for fiscal year 2021-22 is increased by \$125,000 for

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1 the purpose for which the appropriation is made and the dollar amount for fiscal year
2 2022-23 is increased by \$125,000 for the purpose for which the appropriation is
3 made.

4 (2) UW SYSTEM, GENERAL PROGRAM OPERATION; EPINEPHRINE FOR AMBULANCES. In
5 the schedule under s. 20.005 (3) for the appropriation to the board of regents of the
6 University of Wisconsin System under s. 20.285 (1) (a), the dollar amount for fiscal
7 year 2021-22 is increased by \$25,500 for the purpose for which the appropriation is
8 made and the dollar amount for fiscal year 2022-23 is increased by \$25,500 for the
9 purpose for which the appropriation is made.

10 (3) STATE AIDS FOR TECHNICAL COLLEGES; EPINEPHRINE FOR AMBULANCES. In the
11 schedule under s. 20.005 (3) for the appropriation to the technical college system
12 board under s. 20.292 (1) (d), the dollar amount for fiscal year 2021-22 is increased
13 by \$4,500 for the purpose for which the appropriation is made and the dollar amount
14 for fiscal year 2022-23 is increased by \$4,500 for the purpose for which the
15 appropriation is made.

16 (END)