

Department of Legislative Services  
 Maryland General Assembly  
 2022 Session

FISCAL AND POLICY NOTE  
 Enrolled - Revised

House Bill 136

(Delegate Kerr, *et al.*)

Ways and Means

Education, Health, and Environmental Affairs

Education - Public and Nonpublic Schools - Seizure Action Plans (Brynleigh's Act)

This bill requires, beginning in the 2023-2024 school year, local boards of education to take specified steps regarding the health care needs of students with a seizure disorder, including requiring each public school to have at least two school personnel trained in seizure disorders, as specified. Each public school must provide an abridged presentation from the school personnel who received training to specified staff every two years. The parent or guardian of a student diagnosed with a seizure disorder must collaborate with school personnel to create a seizure action plan and provide medication and authorization, as specified. A nonpublic school *may* require trained personnel. **The bill takes effect July 1, 2022.**

Fiscal Summary

**State Effect:** General fund expenditures increase by \$33,500 for the Maryland Department of Health (MDH) for staff in FY 2023 only. Revenues are not affected.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	33,500	0	0	0	0
Net Effect	(\$33,500)	\$0	\$0	\$0	\$0

*Note: ( ) = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease*

**Local Effect:** Local school system and local health department (LHD) expenditures increase minimally to implement the required training for school personnel. To the extent some local school systems or LHDs hire additional personnel to meet the trained personnel requirement, expenditures increase by a potentially significant amount, as discussed below. Revenues are not affected. **This bill may impose a mandate on a unit of local government.**

**Small Business Effect:** None.

## Analysis

### Bill Summary:

#### *Public and Nonpublic School Staff Training*

Beginning in the 2023-2024 school year, local boards *must* require each public school (and a nonpublic school *may* require a school) to have at least two school personnel complete training in (1) recognizing the signs and symptoms of a seizure; (2) appropriate steps for administering first aid for a seizure; and (3) if written authorization is given by a parent or guardian, as specified, administering or assisting with the self-administration of a seizure rescue medication, medication prescribed to treat seizure disorder symptoms approved by the U.S. Food and Drug Administration, and manual vagus nerve stimulation. For public schools, the bill establishes that the training must be paid and considered professional development (so that, as appropriate, it may count toward renewal of a professional certificate); training may be administered online or in person. Further, for public schools, a school nurse, certified nursing assistant, or certified medication technician *must* serve as one of the trained school personnel. An individual who is recommended by the school nurse or other school health practitioner and who volunteers may also serve as one of the trained school personnel.

For nonpublic schools, a school nurse or other school health care practitioner may serve as one of the trained school personnel. In order to authorize school personnel to administer or assist in the administration of seizure medication, a nonpublic school must obtain written authorization from a parent or guardian, as specified.

Beginning in the 2023-2024 school year, each public school must require the school personnel who completed the professional development training to present an abridged version of the best practices for seizure response based on specified school health services guidelines to all school personnel who have direct contact with and supervision of students. This information must be presented every two years and include (1) recognizing the signs and symptoms of a seizure and (2) procedures for notifying the school personnel trained in administering first aid for a seizure. School personnel must attend the presentation during professional development, a preservice meeting, or a staff meeting. Local boards are encouraged to provide the presentation to school bus drivers and school bus aides during work hours or to provide the information from the presentation.

The Maryland State Department of Education (MSDE) and MDH, in consultation with the Epilepsy Foundation of America and other interested stakeholders, must develop school health services guidelines and a training program for the two specified public school personnel on the management of a student diagnosed with a seizure disorder.

### *Seizure Action Plan*

The parent or guardian of a student diagnosed with a seizure disorder must collaborate with school personnel to create a “seizure action plan,” defined as a written individualized health plan designed to acknowledge and prepare for the health care needs of a student diagnosed with a seizure disorder.

MSDE, in collaboration with MDH, must ensure health guidelines include seizure first aid procedures and health plans include seizure action plans.

A copy of a seizure action plan must be retained in the office of the school nurse or an administrator and distributed to any school personnel or volunteer responsible for the supervision or care of a student diagnosed with a seizure disorder.

### *Medication Provided by Parent or Guardian*

The parent or guardian of a student diagnosed with a seizure disorder must provide the school with (1) written authorization for a trained school employee to administer or assist with administering seizure medication at school; (2) the prescribed medication in an unopened, sealed package with the label affixed by the dispensing pharmacy intact; and (3) a written statement from the student’s health care practitioner that includes specified information. A written authorization for the administration of a seizure rescue medication or medication prescribed to treat seizure disorder symptoms must be (1) effective for the school year in which it is submitted and (2) renewed each school year.

### *Scope of Authorization*

Nothing in the bill may be construed to authorize any public school personnel to administer or assist in self-administration of medication for a seizure, unless the personnel (1) has completed the paid professional development training, as specified, and (2) is authorized through written authorization to administer or assist in self-administration of medication.

### *Good Faith Immunity*

Except for any willful or grossly negligent act, an employee or other school personnel who responds in good faith to a student experiencing a seizure or seizure disorder symptoms in accordance with the bill is immune from civil liability for any act or omission in the course of responding to the situation.

**Current Law:** With the assistance of the LHD, each local board of education must provide adequate school health services, instruction in health education, and a healthful school environment. MSDE and MDH must jointly develop public standards and guidelines for

school health programs and assist local boards of education and LHDs in their implementation.

MSDE and MDH must jointly establish guidelines for public schools regarding emergency care for students with special health needs. The guidelines must include procedures for the emergency administration of medication and the proper follow-up emergency procedures, a description of parental or caregiver responsibilities, a description of school responsibilities, a description of student responsibilities that are age and condition appropriate, and any other issue that is relevant to the emergency medical care of a student with special health needs. MSDE and MDH must provide technical assistance to schools to implement the guidelines established, train school personnel at the local level, and develop a process to monitor the implementation of the guidelines.

According to regulations, a nurse may delegate the responsibility to perform a nursing task to an unlicensed individual, a certified nursing assistant, or a medication technician. The delegating nurse retains the accountability for the nursing task. A nursing task delegated by the nurse must be within the area of responsibility of the nurse delegating the act. Further, in the scope of sound nursing judgment of a reasonable and prudent nurse, the delegated task must be able to be properly and safely performed without jeopardizing the client welfare.

### *504 Plans*

Under [Section 504 of the federal Rehabilitation Act of 1973](#), an organization that receives federal money, including public and many private schools, may not discriminate against a person on the basis of a disability. Section 504 requires schools to make a “reasonable accommodation” for students with disabilities to allow them to participate in school and school-related activities. Section 504 plans can be created to help students with disabilities receive accommodations that are not covered by their Individualized Education Plan (IEP). Students with disabilities who do not need an IEP may still receive accommodations through a Section 504 plan.

For example, a student who has diabetes may have a Section 504 plan that includes a schedule for getting medication. A student who uses a wheelchair may have a Section 504 plan that provides for special transportation during field trips.

### *Auto-injectable Epinephrine*

Each local board of education is required to establish a policy for public schools within its jurisdiction to authorize the school nurse and other school personnel to administer auto-injectable epinephrine, if available, to a student who is determined to be or perceived to be in anaphylaxis, regardless of whether the student (1) has been identified as having an

anaphylactic allergy or (2) has a prescription for epinephrine as prescribed by an authorized licensed health care practitioner. The policy must also include training for school personnel on how to recognize the symptoms of anaphylaxis, procedures for the emergency administration of auto-injectable epinephrine, proper follow-up emergency procedures, and a provision authorizing a school nurse to obtain and store at a public school auto-injectable epinephrine to be used in an emergency situation.

Each public school must submit, on the form that MSDE requires, a report on each incident at the school or at a related school event that required the use of auto-injectable epinephrine. MSDE must develop and disseminate a standard form to report each incident requiring the use of auto-injectable epinephrine at a public school.

**State Expenditures:** General fund expenditures increase by \$33,529 in fiscal 2023, which reflects the bill’s July 1, 2022 effective date. MDH advises that, as its Office of School Health has only one staff person, the department cannot absorb the requirements of the bill with existing resources; thus, one part-time (50%) contractual position is necessary to allow MDH to work with MSDE and the Epilepsy Foundation of America to develop guidelines for seizure first aid plans and the specified training program for school personnel. This estimate reflects the cost of hiring one part-time (50%) contractual health policy analyst in fiscal 2023 only, to ensure health guidelines and training align with the standards for school personnel on the health care needs of students diagnosed with a seizure disorder. It includes a salary, fringe benefits, one-time start-up costs, and operating expenses. The position terminates June 30, 2023.

Contractual Position	0.5
Salary and Fringe Benefits	\$26,451
Start-up Expenditures	6,548
Operating Expenses	<u>530</u>
<b>Total FY 2023 State Expenditures</b>	<b>\$33,529</b>

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State’s implementation of the federal Patient Protection and Affordable Care Act.

MSDE advises that it can use existing resources to, in collaboration with the School Health Services Guidelines and Practice Issues Committee and MDH, engage the Epilepsy Foundation of America and other interested stakeholders to develop guidelines and a training program for school personnel on the health care needs of a student diagnosed with a seizure disorder as well as ensure health guidelines include a seizure action plan.

**Local Expenditures:** Local school system and/or LHD expenditures increase minimally to implement the required annual training for specified school personnel (LHDs provide

school nurses in approximately 14 jurisdictions). Local school system expenditures may include hiring substitutes or providing teacher stipends to allow the two specified school personnel to attend training each year. Costs depend on the training developed to meet the requirements of the bill and cannot be reliably estimated at this time.

Different local school systems and LHDs employ different mixes of registered nurses, licensed practical nurses, other certified health care workers, or unlicensed staff working under the supervision of a registered nurse (who may be responsible for more than one school) as school nurses. Some school systems may choose to hire additional personnel to meet the bill's requirement of having two trained personnel (including at least one school nurse, certified nursing assistant, or certified medication technician), in which case local school system and/or LHD expenditures may increase significantly. Baltimore City Public Schools advises that hiring one additional staff member to meet the requirement could cost around \$65,000 per school. However, the bill does not specifically require the hiring of additional staff.

Some local school systems already provide seizure training to staff and can, therefore, accommodate the requirements of the bill with existing resources. Specifically, St. Mary's County Public Schools and Prince George's County Public Schools advise that they have sufficient existing resources to accommodate the changes in the bill.

Baltimore County Public Schools advises that it already has a plan to meet the needs of students with seizure conditions under Section 504 and Maryland Health Services Guidelines. It has a nurse and first aid back up staff in each school who could meet the requirements for seizure response under the bill; however, the required training would have an operational and minimal fiscal impact.

Charles County Public Schools advises that it only permits school nurses to administer nonoral seizure medications. Therefore, school personnel who receive training in administering seizure medication as required by the bill may not be permitted to deliver other seizure medication to a student in need in Charles County.

However, each local school system and/or LHD can likely include the presentation of an abridged training every two years during professional development, a preservice meeting, or staff meeting to all school personnel who have direct contact with or supervision of students with existing resources.

**Additional Comments:** Nonpublic schools *may* require two school personnel to be trained as required of public school employees, and a school nurse or other school health care practitioner may count as one of those trained personnel.

## **Additional Information**

**Prior Introductions:** A similar bill, SB 225 of 2021, received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. Its cross file, HB 370, received a hearing in the House Ways and Means and House Health and Government Operations committees, but no further action was taken. Another similar bill, SB 549 of 2020, received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. Its cross file, HB 675 of 2020, received a hearing in the House Ways and Means Committees, but no further action was taken.

**Designated Cross File:** SB 299 (Senator Young, *et al.*) - Education, Health, and Environmental Affairs.

**Information Source(s):** Maryland Association of County Health Officers; Maryland State Department of Education; Maryland Department of Health; Baltimore City Public Schools; Anne Arundel County Public Schools; Baltimore County Public Schools; Charles County Public Schools; Montgomery County Public Schools; Prince George's County Public Schools; St. Mary's County Public Schools; Department of Legislative Services

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