

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 78

(Delegate Palakovich Carr)

Ways and Means

Education, Energy, and the Environment

Public Schools - Anaphylactic Food Allergies - Guidelines

This bill requires the Maryland State Department of Education (MSDE) and the Maryland Department of Health (MDH) to jointly update, by August 1, 2023, the Maryland State School Health Services guidelines to reduce the risk of exposure to anaphylactic causative agents (specifically, major food allergens) in classrooms and common areas. Each local board of education must make a good faith effort to adopt and implement the updated guidelines before the 2023-2024 school year but must do so before the 2024-2025 school year. Each public school must develop a system to disclose, within a reasonable time before service, the foods served in the school and the major food allergens contained in them. The principal of a public school that has a child attending with an anaphylactic allergy must implement, as necessary, the strategies developed in accordance with the Maryland State School Health Service guidelines and monitor and implement the guidelines ultimately adopted and implemented by the local board. **The bill takes effect June 1, 2023.**

Fiscal Summary

State Effect: MSDE and MDH can update the guidelines with existing budgeted resources. Revenues are not affected.

Local Effect: The bill's requirements can be handled with existing budgeted resources, as discussed below. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: “Major food allergen” means milk, eggs, fish, crustacean shellfish, tree nuts, wheat, peanuts, soybeans, and sesame.

At a minimum, the updated guidelines as well as those established by each local board of education must include certain specified elements, including an emphasis on communication and collaboration among students, staff, and parents; designation of food-free areas in the school and of tables in the cafeteria that are free of major food allergens; allergen-related guidelines for school-provided transportation, participation in school events, and functions held on school grounds; and strategies to reduce bullying and harassment of students with anaphylactic allergies. Each local board must publish the guidelines on its website and by any other method determined appropriate by the board.

Each public school must develop a system to disclose, within a reasonable time in advance of service, the foods served in the school and any major food allergens contained in the food. A disclosure may be posted on the Internet, communicated electronically, or communicated via physical messages sent to the school community.

Before January 1, 2026, a public school may not be required to dispose of a food product made or purchased before January 1, 2023, that was labeled in accordance with federal law before the effective date of the requirement that sesame be listed on the food product label under the federal Food Allergy Safety, Treatment, Education, and Research Act of 2021. If a public school is using a food product that was made or purchased before January 1, 2023, the school must disclose that the food may contain sesame.

Current Law: A principal of a public school in which a student has an anaphylactic allergy must take steps, in consultation with a school health professional, to reduce the child's risk of exposure to anaphylactic causative agents and to establish procedures for self-administration of medication for anaphylaxis. A school may revoke a child's authority to self-administer medication if the child misuses the medication. Current law limits the liability of school staff who respond in good faith with respect to treatment of students having anaphylactic allergic reactions.

In consultation with a school health professional, a school principal must monitor the strategies developed in accordance with the Maryland State School Health Service guidelines to reduce the risk of exposure to anaphylactic causative agents in classrooms and common areas. A school principal must also designate a peanut- and tree-nut-free table in the cafeteria.

MSDE and MDH are jointly responsible for developing public standards and guidelines for school health programs. Pursuant to that statutory authority, they have issued guidelines titled [Management of Students at Risk for Anaphylaxis Reaction](#). The guidelines contain recommendations for minimum standards of care and current best practices for students with anaphylactic allergies. Last revised in 2009, MSDE advises that the department is presently collaborating with MDH to review and update the guidelines.

The 2009 guidelines note that school nurses should develop an emergency plan for all students with a diagnosis of anaphylaxis or at risk for anaphylaxis (including those with food allergies). The nurse must communicate the plan with parents/guardians and appropriate school staff. Part of this communication should be to the school food service manager in relation to students with food allergies, diagnosis of anaphylaxis, or health conditions that place them at risk from anaphylactic causative foods. The emergency plan should include, identify, and address possible allergen exposure in classrooms and cafeterias. The guidelines also indicate that school nurses should assess the special health needs of students with a diagnosis of or at risk for anaphylaxis. Part of this assessment should include an appraisal of a student's food allergy history. Students who obtain school meals as part of any U.S. Department of Agriculture school meal program are entitled to meal modifications because of their special health needs.

State Expenditures: MSDE advises that the agency, in conjunction with MDH, has drafted updated Maryland State School Health Services guidelines for anaphylaxis and that the document is currently under review for legal sufficiency. Therefore, MSDE and MDH can publish the updated guidelines by August 1, 2023, with existing resources. MDH's Office of Food Protection oversees the regulation of food service facilities, including cafeterias, which is delegated to local health departments (LHDs) for inspections, licensing, and enforcement. MDH advises that the requirements of the bill are beyond the scope of the regulations for food service facilities and would not be enforced by MDH or LHD staff.

Local Expenditures: Local boards of education can adopt and implement the required guidelines before the 2024-2025 school year with existing resources. Local boards can also make a good faith effort to implement the updated guidelines before the 2023-2024 school year with existing resources, although the August 1, 2023 date for the updated guidelines to be available to them may make the process operationally difficult. Similarly, public schools can develop systems to disclose the foods served in the school and major food allergens contained in the food with existing resources. Some school systems already implement these measures.

Some school nurses are employed by LHDs, not local boards of education. To the extent that school nurses employed by LHDs must alter existing practices surrounding the creation of emergency plans and allergy assessments related to food allergens, there may be an operational impact, but school nurses can likely accommodate any changes with existing resources.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See SB 95 and HB 154 of 2022.

Designated Cross File: SB 120 (Senator Lam) - Education, Energy, and the Environment.

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

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