



Maryland Association for Justice, Inc.

2022 Position Paper

HB 49 - Public Health - Emergency and Allergy Treatment Program - Nurse Practitioners

FAVORABLE WITH AMENDMENTS

HB 49 authorizes nurse practitioners to prescribe and dispense auto-injectable epinephrine to certain certificate holders who operate youth camps in emergencies to persons experiencing anaphylaxis. In the 2018 Session, the Health and government Operations and Senate Finance Committees heard testimony on a similar bill, SB 1473/ CH 527, that was ultimately codified with amendments.

Central to HB 49 is a legislative grant of immunity: causes of action for civil liability “may not arise” against certificate holders who participate in the program and negligently cause harm. § 13-707 (page 3). MAJ respectfully submits that a legislative grant of immunity under these circumstances would be bad public policy, because victims of negligent conduct, including minor children, lose their chance to get justice in court.

There is no need for the broad civil immunity included in HB 49. Youth camps are insured against liabilities arising from the provision of services they provide. Unfortunately, under HB 49, a youth camp could negligently refrigerate EpiPens, or allow EpiPens to expire (they are good for just one year), and persons experiencing anaphylaxis who are injured as a result would have no recourse in court.

The Maryland Association for Justice respectfully requests amendments to HB 49, to provide necessary protection for individuals who are treated with auto-injectable epinephrine for an anaphylactic reaction. MAJ encourages the Committee to conform HB 49 to the recently codified provisions in Subtitle 7A under Title 13 of the Health General Article (outlined in CH 527- 2018). HB 49 should require participating youth camps to follow the manufacturer’s instructions with respect to storage, and only maintain supplies of unexpired auto-injectable epinephrine for use under the expansion created by HB 49. If the purpose of HB 49 is to protect individuals who suffer an unexpected anaphylactic reaction, then HB 49 should not deprive those same individuals of their right to hold negligent actors accountable in court, if their negligence causes them to suffer harm.

Attached Page 2 – Amendments to HB 49

**The Maryland Association for Justice respectfully urges a
Favorable with Amendments Report**



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MAJ HB 49 – 2022 Amendment Part 1

Insert the following new underlined language in §13–705 on Page 3 after line 7 of HB 49.

(2) Possess and store prescribed auto–injectable epinephrine and the necessary paraphernalia for the administration of auto–injectable epinephrine

(I) IN ACCORDANCE WITH THE MANUFACTURER’S INSTRUCTIONS; AND

(II) IN A LOCATION THAT IS READILY ACCESSIBLE TO EMPLOYEES OR AFFILIATED INDIVIDUALS IN AN EMERGENCY SITUATION.

(3) A YOUTH CAMP THAT OPERATES WITH A VALID CERTIFICATE AS DEFINED IN §13–705 SHALL DESIGNATE THE EMPLOYEES WHO ARE CERTIFICATE HOLDERS OR DESIGNATED AFFILIATED INDIVIDUALS WHO ARE CERTIFICATE HOLDERS WHO WILL BE RESPONSIBLE FOR THE STORAGE, MAINTENANCE, AND CONTROL OF THE SUPPLY OF AUTO–INJECTABLE EPINEPHRINE.

(4) A YOUTH CAMP MAY NOT OBTAIN OR STORE AUTO–INJECTABLE EPINEPHRINE UNLESS YOUTH CAMP HAS AT LEAST TWO EMPLOYEES OR DESIGNATED AFFILIATED INDIVIDUALS WHO ARE CERTIFICATE HOLDERS.

(5) A YOUTH CAMP SHALL MAINTAIN A COPY OF THE CERTIFICATE ISSUED TO AN EMPLOYEE OR A DESIGNATED AFFILIATED INDIVIDUAL UNDER § 13–702 OF THIS SUBTITLE.

MAJ HB 49 – 2022 Amendment Part 2

Insert the following revisions to § 13-707, beginning on Page 3, Line 12 of HB 49

§ 13-707

(a) **(1) A-EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A** cause of action may not arise against a certificate holder or agent authorized under this subtitle for any act or omission when the certificate holder or agent is acting in good faith while administering auto-injectable epinephrine to an individual experiencing or believed by the certificate holder or agent to be experiencing anaphylaxis, except where the conduct of the certificate holder or agent amounts to gross negligence, willful or wanton misconduct, or intentionally tortious conduct.

(2) THE PROVISIONS OF PARAGRAPH (1) OF THIS SUBSECTION DO NOT APPLY IF A CERTIFICATE HOLDER OR A YOUTH CAMP THAT MAKES AVAILABLE, OR A CERTIFICATE HOLDER WHO ADMINISTERS, AUTO–INJECTABLE EPINEPHRINE TO AN INDIVIDUAL WHO IS EXPERIENCING OR IS BELIEVED BY THE CERTIFICATE HOLDER OR AUTHORIZED ENTITY TO BE EXPERIENCING ANAPHYLAXIS:



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(I) FAILS TO FOLLOW STANDARDS AND PROCEDURES FOR STORAGE AND ADMINISTRATION OF AUTO-INJECTABLE EPINEPHRINE; OR

(II) ADMINISTERS AUTO-INJECTABLE EPINEPHRINE THAT IS BEYOND THE MANUFACTURER'S EXPIRATION DATE.

(b)

(1) A cause of action may not arise against any physician for any act or omission when the physician in good faith prescribes or dispenses auto-injectable epinephrine and the necessary paraphernalia for the administration of auto-injectable epinephrine to a ~~person certified by the Department~~ **CERTIFICATE HOLDER OR YOUTH CAMP** under this subtitle.

(2) A cause of action may not arise against any pharmacist for any act or omission when the pharmacist in good faith dispenses auto-injectable epinephrine and the necessary paraphernalia for the administration of auto-injectable epinephrine to a ~~person certified by the Department~~ **CERTIFICATE HOLDER OR YOUTH CAMP** under this subtitle.

(3) A CAUSE OF ACTION MAY NOT ARISE AGAINST ANY NURSE PRACTITIONER FOR ANY ACT OR OMISSION WHEN THE NURSE PRACTITIONER IN GOOD FAITH DISPENSES AUTO-INJECTABLE EPINEPHRINE AND THE NECESSARY PARAPHERNALIA FOR THE ADMINISTRATION OF AUTO-INJECTABLE EPINEPHRINE TO A ~~PERSON CERTIFIED BY THE DEPARTMENT~~ CERTIFICATE HOLDER OR YOUTH CAMP UNDER THIS SUBTITLE.

(c) Scope of section. -- This section does not affect, and may not be construed as affecting, any immunities from civil liability or defenses established by any other provision of the Code or by common law to which a volunteer, physician, or pharmacist may be entitled.