

Department of Legislative Services  
 Maryland General Assembly  
 2021 Session

FISCAL AND POLICY NOTE  
 First Reader

House Bill 370 (Delegate Kerr)  
 Ways and Means and Health and  
 Government Operations

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

This bill requires, beginning in the 2022-2023 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, as specified, two school employees trained in seizure disorders. Each public school must provide specified annual staff training. 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 public school must also provide a seizure education program to all students as specified. A nonpublic school *may* require trained staff and provide a seizure education program. **The bill takes effect July 1, 2021.**

Fiscal Summary

**State Effect:** General fund expenditures increase by an estimated \$77,900 to hire a contractual education specialist in FY 2022. Revenues are not affected.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	77,900	0	0	0	0
Net Effect	(\$77,900)	\$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/or local health department expenditures increase minimally to implement the required training program for school personnel. To the extent staff are not trained as required, local school systems may need to hire additional registered nurses to meet the trained staff requirement as explained below. Local school systems can provide instruction on the seizures and seizure disorders using existing resources; however,

resources may be diverted from existing health curriculum requirements. Revenues are not affected.

**Small Business Effect:** None.

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## Analysis

### Bill Summary:

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

Beginning in the 2022-2023 school year, local boards must require two school employees at each public school be trained in (1) recognizing the signs of a seizure; (2) appropriate steps for administering first aid for a seizure; and (3) 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. Alternatively, the presence of a registered nurse who is employed in a school full time and assumes responsibility for the administration of a seizure rescue medication, medication prescribed to treat seizure disorder symptoms, and manual vagus nerve stimulation may count as one of the trained school employees. Likewise, a nonpublic school *may* require such staff.

Beginning in the 2022-2023 school year, each public school must provide annual training to administrators, faculty, therapists, guidance counselors, classroom aides, bus drivers, contracted employees, and any other school personnel with direct contact supervision of students on (1) recognizing the signs and symptoms of a seizure and (2) appropriate steps for administering first aid for a seizure. A training program for school personnel on the health care needs of a student diagnosed with a seizure disorder must be fully consistent with training programs and guidelines developed by the Epilepsy Foundation of America or a successor organization.

#### *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.

The State Board of Education must adopt regulations establishing procedures for the development and content of a seizure action plan. 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 if the requirements of this bill are fulfilled.

### *Good Faith Immunity*

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

### *Education Program for Students at Public and Nonpublic Schools*

Beginning in the 2022-2023 school year, a public school must provide an age-appropriate seizure education program on seizures and seizure disorders to all students at least once between kindergarten and third grade and grades 6 and 12. A schoolwide seizure education program satisfies this requirement. Likewise, a nonpublic school *may* offer a program. A seizure education program must be consistent with guidelines published by the Epilepsy Foundation of America or a successor organization.

**Current Law:** With the assistance of the local health department, each local board of education must provide adequate school health services, instruction in health education, and a healthful school environment. The Maryland State Department of Education (MSDE) and the Maryland Department of Health (MDH) must jointly develop public standards and guidelines for school health programs and offer assistance to the local boards of education and local health departments 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 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; such that, in the judgment of the nurse, it can be properly and safely performed without jeopardizing the client welfare; and a task that a reasonable and prudent nurse would find is within the scope of sound nursing judgment.

### *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.

### *Health Education Requirements*

Each local school system must (1) provide in public schools a comprehensive health education program with sufficient frequency and duration to meet the requirements of the State curriculum for all students in prekindergarten through grade 8 and (2) offer in public schools a comprehensive health education program in grades 9 through 12 that enables students to meet graduation requirements and to select health education electives. Access to the curriculum must be provided for nondiploma-bound students.

In order to graduate from a public high school in Maryland, students must complete a half credit of health. According to MSDE, a half-credit course is about 67 hours of instruction time.

State law requires local school systems to teach a number of specified health topics including drug addiction and prevention education, awareness and prevention of sexual abuse and assault, and cardiopulmonary resuscitation (CPR) that includes hands-only CPR and the use of an automated external defibrillator.

State regulations require health instruction in the following topics: mental and emotional health; alcohol, tobacco, and other drugs; personal and consumer health; family life and human sexuality; safety and injury prevention; nutrition and fitness; and disease prevention and control.

**State Expenditures:** General fund expenditures increase by \$77,923 in fiscal 2022, which reflects the bill's July 1, 2021 effective date for a contractual position at MSDE.

MSDE has determined that one regular full-time position is needed to implement the bill. However, the Department of Legislative Services advises that the added responsibilities incurred by this legislation are not permanent and, thus, may be performed by a contractual employee. This estimate reflects the cost of hiring a full-time education specialist with specific medical knowledge regarding seizure disorder to develop regulations establishing procedures for the development and content of seizure action plans, overseeing the development of training material for local school systems to train the individuals as required by the bill, and ensuring that the education program for students is age appropriate. It includes salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Contractual Position	1
Salary and Fringe Benefits	\$72,178
Start-Up Expenditures	5,090
Operating Expenses	655
<b>Total FY 2021 State Expenditures</b>	<b>\$77,923</b>

Future year expenditures reflect terminating the position July 1, 2022 (fiscal 2023).

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.

**Local Expenditures:** Local school system and/or local health department expenditures increase minimally to implement the required annual training for school personnel. Local school system expenditures may include hiring substitutes or providing teacher stipends to allow teachers and other school staff to attend training. Local health departments provide school nurses in some jurisdictions. Costs will depend on the training developed to meet the requirements of the bill and cannot be reliably estimated at this time.

Some schools may choose to hire additional registered nurses to meet the trained staff requirement. In that case, local school system and/or local health department expenditures may increase significantly. According to Montgomery County and Charles County Public Schools, it costs a total of approximately \$100,000 annually to hire a full-time registered nurse. However, the bill does not require the hiring of additional registered nurses unless each school does not have two school employees trained in (1) recognizing the signs and symptoms of a seizure and (2) appropriate steps for administering first aid for a seizure. Such training must be provided annually to specified school personnel under the bill. Charles County Public Schools only permits school nurses to administer seizure medications. Therefore, school employees who receive training in administering seizure medication as required by the bill may not be permitted to deliver seizure medication to a student in need in Charles County.

Local school systems can provide instruction on the seizures and seizure disorders using existing resources; however, resources may be diverted from existing health curriculum requirements.

**Additional Comments:** Nonpublic schools *may choose* to require two school employees to be trained in seizure disorders where a full-time registered nurse may count as one of those employees. Nonpublic schools may also choose to provide a seizure education program.

## **Additional Information**

**Prior Introductions:** HB 675 of 2020 was referred to the House Ways and Means and House Health and Government Operations Committees but received no further action. SB 549 of 2020 had a hearing in the Senate Education, Health, and Environmental Affairs Committee but received no further action.

**Designated Cross File:** SB 225 (Senators Young and Feldman) - Education, Health, and Environmental Affairs.

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

**Fiscal Note History:** First Reader - January 18, 2021  
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