



Old Dominion Association of Church Schools

Second Update for ODACS Schools Epinephrine Memo from VDOE

July 6, 2022

Dear Pastors and Administrators,

Not long after we sent you the update yesterday, we received a helpful response from VDOE. This update will attempt to explain the meaning of the new law as it applies to our ministries. At the end it will include the text of the VDOE response. HB 1328¹ and SB 737 each have two parts.

PART 1

The first part deals with exemptions from liability for persons rendering certain kinds of emergency care. To a long list in the Code of such persons has been added “a nurse at an early childhood care and education entity [or] employee at the entity...who is authorized by a prescriber and trained in the administration of epinephrine and who provides, administers, or assists in the administration of epinephrine to a child believed in good faith to be having an anaphylactic reaction...”

In other words, this part of the new law does not require a Religiously Exempt child care center to have a person trained in the administration of epinephrine, nor does it forbid an employee of the child care center to administer epinephrine. It does protect from liability certain employees at certain child care centers when they administer epinephrine in good faith.

The response from VDOE states that this provision of the new law “may apply” to Religiously Exempt child day centers. In other words, it is unclear whether or not this protection from liability applies to our ministries. The primary reason for the lack of clarity is that the Religious Exemption portion of the Code² nowhere refers to the liability exemption portion of the Code³.

PART 2

The second part requires the Department of Education to promulgate regulations for certain child care centers to maintain a stock of epinephrine as well as to have somebody trained in its storage and administration on duty at all times. This part of the new law does not apply to Religiously Exempt child care centers, so long as they do not receive child care subsidies from the state. The new VDOE regulations will apply to all subsidy providers, including Religiously Exempt centers that participate in the subsidy program.

In other words, since ODACS ministries do not participate in the subsidy program, the new regulations will not apply to our ministries.

SOME ADVICE

In view of these developments, it would be wise for each of our ministries to examine its policies regarding the administration of epinephrine to children. Our K-12 schools are probably already accustomed to working with children who have an EpiPen® prescription. You may want to consider applying your K-12 policies and training to all of your other children's ministries. Your ministry is certainly not prohibited from having a nurse or employee trained in the administration of epinephrine, or even in the storage of stock epinephrine. It would be good to inform your daycare and preschool employees that they may or may not be protected from liability should they administer epinephrine, but that lack of clarity should not prevent them from doing the right thing if they believe in good faith that a child is experiencing an anaphylactic reaction. Of course, it is always important to communicate clearly with parents regarding this matter.

Sincerely,

Dan Zacharias
Executive Director

¹ <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=221&typ=bil&val=hb1328>

² <https://law.lis.virginia.gov/vacode/title22.1/chapter14.1/section22.1-289.031/>

³ <https://law.lis.virginia.gov/vacode/title54.1/chapter34/section54.1-3408/>

TEXT OF THE VDOE RESPONSE TO ODACS

“Good Afternoon Mr. Zacharias,

“The 2022 General Assembly passed SB 737 and HB1328 (identical bills). There are two components to this legislation outlined in the memo.

“Currently, § 22.1-289.031 of the Code does not include requirements for religiously exempt child day centers (RECDC) to follow the provisions in § 54.1-3408. However, the amendment to § 54.1-3408 which permits a nurse at an early childhood care and education entity, employee at the entity, or employee of a local health department to possess and administer epinephrine if authorized by a prescriber and trained in the administration of epinephrine may apply to RECDCs. **This information was provided for informational purposes only.**

“The second component is the requirement for VDOE regulations to be amended to include policies and procedures for the administration of stock epinephrine. This component does not apply to religiously exempt child day centers who are **not** subsidy vendors because there is not a 'regulation' in the Virginia Administrative Code applicable to this program type. RECDC's that are not subsidy vendors are regulated but only based on requirements set forth in the Code (§ 22.1-289.031). All subsidy vendors would be subject regulatory changes and information regarding updates to regulatory requirements will be communicated as more information is available. Details on acquiring stock epinephrine for use in child care programs will be provided by VDOE as well as additional resources, training, and information as it becomes available.”