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MEDICAL CANNABIS ON SCHOOL PROPERTY

I. Issue.

Across the U.S., schools are contemplating the factors necessary for the administration of medical cannabis on school property. School drug free policies have historically prohibited onsite cannabis use. However, with the introduction of medical cannabis, policymakers are re-examining school drug free policies in light of medical cannabis laws.

There are two key issues surrounding medical cannabis on school property in need of consideration: 1) Whether students who are being treated with medical cannabis should be permitted to have their medical cannabis administered on school property; and 2) Whether designated school personnel should be authorized to administer the medical cannabis.

A number of schools in Maryland require a student who is a medical cannabis patient to leave school property or a school-sponsored event in order for the student's parent or legal guardian to administer the medical cannabis. It is unclear the extent to which this exists Statewide. Maryland State Department of Education (MSDE) and the county boards of education have authority over whether medical cannabis use is permitted on school property. To date, MSDE has not issued any Statewide guidance on the administration of medical cannabis at school. Further, the Maryland Medical Cannabis Commission (Commission) is unaware of specific policies adopted by any county boards of education on this issue.

The authority of designated school personnel to administer the medical cannabis would require a change in State statute. Current law authorizes minors to be medical cannabis patients provided that the medical cannabis is administered by a "caregiver" who is minor patient's parent or legal guardian. (See Health-General Article § 13-3301). Adult medical cannabis patients may also choose to have their medical cannabis purchased and/or administered by a caregiver. Every medical cannabis caregiver, whether for a minor or adult patient, must register with the Commission and obtain a Commission-issued identification card in order to purchase medical cannabis from a licensed medical cannabis dispensary and administer the medical cannabis to the patient.

II. Background.

Thirty-three states and Washington, D.C. have medical cannabis programs, with 17 of those states permitting medical cannabis for pediatric patients. Of the 17 states, nine states permit medical cannabis to be administered to students on school property.

Support

Some students depend on medical cannabis for daily functioning (e.g. seizure disorders, autism, posttraumatic stress disorder, etc.). There is a benefit to finding a solution to the prohibition of medical cannabis on school property so that medical cannabis students can attend school throughout the day without interruption.

According to the Pew Research Center both parents work full-time in more than half of U.S. households, thereby making it inconvenient or even unworkable for students to have the medical cannabis administered by their parents during the school day. More than one-third of U.S. children are being raised by single parents compounding the difficulty of employment disruptions. (Kids Count Data Center, 2016). Therefore, allowing designated school health personnel to administer the medical cannabis on school property would address significant barriers to care and ensure compliance with a student's treatment regime.

Concerns

School drug free policies prohibit cannabis use on school property. There are concerns about students administering their own medical cannabis due to the risk of diversion to other students or disruption to the educational environment. This is also true of other medications at schools. Young students may not have the ability to administer medical cannabis to themselves and substance abuse concerns exist.

Because medical cannabis is classified as a Schedule I drug in the Controlled Substances Act of 1970, the following concerns to administering a federally-illicit substance on school grounds have been raised throughout the U.S. School nurses have expressed concerns about Drug Enforcement Administration (DEA) arrests and convictions for administering medical cannabis or losing their nursing license. Educational policy groups and administrators have expressed concerns about the possibility of losing school funding for permitting the administration of State-sanctioned medical cannabis on school property. The Commission is unaware of any school or university having its federal funding withheld for permitting medical cannabis on school property or for conducting academic medical cannabis research in accordance with State laws.

Enforcement - Legal Medical Cannabis Programs

Although the federal government cannot require State and local governmental to enforce federal law, the U.S. Department of Justice (DOJ) has the authority to enforce federal cannabis laws, even in states with authorized medical cannabis programs. However, federal budget legislation passed in 2014, subject to reauthorization each year, prohibits the DOJ from interfering with the implementation of State medical cannabis programs. Courts have consistently interpreted this statutory provision to protect “individuals who engaged in conduct permitted by state medical cannabis laws and who fully complied with such laws.” *U.S. v. McIntosh*, 833 F.3d 1163 (9th Cir. 2016).

IV. Other Jurisdictions.

Most of the states that permit medical cannabis to be administered on school grounds have the following provisions in common:

- Students using medicinal cannabis products must have a valid medical recommendation.
- Only non-smokeable cannabis products may be administered on school grounds.
- Only parents, legal guardians, or primary caregivers may administer the medical cannabis.
- Students cannot be punished for medical cannabis use on school property.

Enacted Laws

Colorado. A school district board of education may adopt and implement a policy whereby a primary caregiver may administer medical cannabis to a student who is a qualifying medical cannabis patient who is enrolled in a school of the school district on school grounds, upon a school bus, or at any school-sponsored event.

- The primary caretaker may not administer the non-smokeable medical cannabis in a manner that creates disruption to the educational environment or causes exposure to other students.
- The school district board of education or charter school determines who may act as the primary caretaker and the reasonable parameters for the administration and use of the non-smokeable medical cannabis. However, nothing requires the school district staff to administer the medical cannabis.
- A school is exempt if the school district or charter school can reasonably demonstrate that it lost federal funding as the result of implementing.
- The non-smokeable cannabis may not be administered at school unless a written plan for the administration of the cannabis is agreed to and signed by the school principal or his/her designee and a parent or legal guardian.
- Requires a written statement releasing the school, and employees and volunteers of the school, from liability except in cases of willful or wanton conduct or disregard of the treatment plan.
- The medical cannabis storage container or plan for administration must have clearly labeled dosing, timing, and delivery route instructions from a recommending provider.

- After administration, the medical cannabis must be kept in a locked storage container and must be returned to the student’s parent, legal guardian, or designee at the end of the school day. (Colorado Revised Statutes – C.R.S. 22-1-119.3)

Delaware. Allows designated registered caregivers (parents or legal guardians) to legally administer medical cannabis oil to students within the State’s medical cannabis program on a school bus and on school property of the preschool, primary, or secondary school in which the qualifying patient is enrolled. The law does not allow school nurses or other school employees to administer the medical cannabis unless he or she is a parent or legal guardian of the student medical cannabis patient. The parent or legal guardian may possess no more than the number of doses of medical cannabis oil prescribed per day which must be kept at all times on his or her person. Provides for immunity from civil, criminal, or other penalties. The law was supported by the Delaware Department of Education. (Senate Bill 181 (2016)) - Title 16, Ch 49A, §4904A of the Delaware Code)

Florida. Permits medical cannabis to be administered on school grounds but requires district school boards to adopt a policy and procedure for the administration. The policy shall ensure access by the qualified patient; identify how the cannabis will be received, accounted for and stored, and establish processes to prevent access by other students and school personnel whose access would be unnecessary for the implementation of the policy. (2018 Florida Statutes, Title XLVIII, Chapter 1006.062)

Illinois. Requires a school district, public school, charter school, or nonpublic school to adopt a policy for the implementation of a medical cannabis infused product on school premises or a school bus. Authorizes a parent, guardian, or any other individual registered with the Department of Public Health as a designated caregiver of a student who is a qualifying medical cannabis patient to administer a medical cannabis infused product to the student on the premises of the child’s school or on the child’s school bus if both the student and the parent, guardian, or registered caregiver have been issued registry identification cards. After administering the product, the parent, guardian, or registered caregiver must remove the medical cannabis from the school premises or school bus. The medical cannabis infused product may not be administered in a manner that would create a disruption to the school’s educational environment or would cause exposure of the product to other students. Nothing in this law requires a school’s staff member to administer the medical cannabis infused product to a student. (Illinois Compiled Statutes, Chapter 105 § 22-33)

Maine. Provides that a “primary caregiver” (defined as parent, guardian or legal custodian under Maine’s medical cannabis law, 22 MRSA § 2423-A91)(E)) may possess and administer cannabis in a non-smokeable form on a school bus or the grounds of the preschool, primary, or secondary school in which a minor qualifying patient is enrolled, if: a) a medical provider has provided the minor qualifying patient with a current written certification for the medical use of cannabis; b) possession of medical cannabis is for the purpose of administering it to the minor qualifying

patient; and c) the caregiver has notified the school that the caregiver has been designated on behalf of the qualifying patient to possess and administer the cannabis to the qualifying patient. Prohibits a school or school district from authorizing medical cannabis if the school or school district would lose federal funding as the result of the authorization. (Title 22, Subtitle 2, Part 5, Chapter 558-C, Section 2426)

New Jersey. Requires a Board of Education or Chief School Administrator of a nonpublic school to develop a policy authorizing parents, guardians and primary caregivers to administer medical cannabis to a student while the student is on school grounds, aboard a school bus or attending a school-sponsored event. The statute goes on to further state that the minimum features of such a policy would allow for protocols to be established for proper use; provide for the manner in which authorization for the administration of the medical cannabis is issued; establish certain locations on school grounds where the medical cannabis may be administered; and prohibit any inhalation or smoking of the medical cannabis. (New Jersey Statutes, Title 18A §40-12.22)

New Mexico. Requires local school boards and the governing bodies of charter schools to adopt policies to authorize the possession, storage, and administration of medical cannabis by parents and legal guardians or by designated school personnel to qualified students for use in school settings. Prohibits a student from self-administering the medical cannabis. Provides the medical cannabis may not be administered in a manner that disrupts the educational environment or causes other students to be exposed to medical cannabis. In order to permit a student who is a medical cannabis patient to have the medical cannabis administered at school, the student must have a treatment plan that is agreed upon by the school's principal and the student's legal guardian. The bill provides exclusions for school districts that can prove that it could lose or has lost federal funding due to allowing medical cannabis in school settings. Provides for immunity from criminal or civil penalties. (Senate Bill 204 (2019); Chapter 261)

Virginia. Provides that no school board can be required to suspend or expel any student who holds a valid written certification for the use of cannabidiol oil or THC-A oil issued by a practitioner for the possession or use of such oil in accordance with the student's individualized health plan and in compliance with a policy adopted by the school board. Prohibits prosecution of a school nurse and other school personnel employed or contracted to deliver health-related services for the possession or distribution of cannabidiol oil or THC-A oil, in accordance with a policy adopted by the local school board, to a student who has been issued a valid written certification. (Chapter 574 §18.2-251.1:1 of the Code of Virginia)

Washington. Permits parents and guardians to administer medical cannabis infused products on school grounds, aboard a school bus, or while attending a school-sponsored event in accordance with the school district's policy. The policy must identify specific locations where the cannabis infused products may be administered. Provides immunity for those acting in accordance with the school district's policy. Includes a provision for the suspension of the law if the federal government communicates that federal education funding will be withheld or that reasonably demonstrates that

future federal funding will be jeopardized. (House Bill 1095(2019); Chapter 204, Laws of 2019 – Effective date: July 28, 2019)

Policy Guidance

Pennsylvania. The Pennsylvania departments of health and education support the administration of medical cannabis under a Safe Harbor Letter to students with serious medical conditions and the maintenance of a safe environment for other students while on school property. A parent, legal guardian, or caregiver may administer medical cannabis to their child/student on school premises provided that the parent, legal guardian or caregiver: (1) provides the school principal with a copy of the Safe Harbor Letter; and (2) notifies the school principal, in advance, of each instance in which the parent or caregiver will administer the medical cannabis to the child/student.

Expiration: The recommended guidance will remain in effect until the Pennsylvania Department of Education promulgates regulations regarding the possession and use of medical cannabis in the commonwealth's schools.

Oklahoma City. The Oklahoma City Public Schools Board approved a policy whereby students in the Oklahoma Public Schools District with medical conditions that require cannabis are now permitted to use the medical cannabis at school. The district will provide a place for a guardian to administer medical cannabis to students at school. The policy also states that the caregiver would be responsible for delivering the cannabis to the qualifying students and removing it from the premises after consumption.

V. Maryland School Health Services.

COMAR 13A.05.05.05 – .15 mandates health coverage in schools by a school health services professional. The school health services professional is defined in COMAR as a physician, certified nurse practitioner, or registered nurse, with experience and or training in working with children or school health programs. Local jurisdictions in Maryland meet the mandate in a variety of ways. Some have a registered nurse in every school; others employ licensed practical nurses or registered nurses in each school. In some schools, trained unlicensed health staff are in each school working under the supervision of a registered nurse who may be responsible for one to three schools.