HB 617

Department of Legislative Services

Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 617 (Delegate Johnson, *et al.*)

Health and Government Operations and Ways and Means / Education, Health, and Environmental Affairs and Finance

Public and Nonpublic Schools - Medical Cannabis - Policy for Administration During School Hours and Events (Connor and Raina's Law)

This emergency bill requires the Maryland State Department of Education (MSDE) and the Natalie M. LaPrade Medical Cannabis Commission to jointly develop guidelines for public schools allowing the administration of medical cannabis during school hours and school-sponsored activities and while on a school bus to students who are qualifying patients. By December 31, 2020, MSDE and the commission must develop the guidelines; by that same date, the commission and the Maryland Board of Nursing (MBON) must make specified recommendations to the General Assembly. The bill also expands the definition of a "caregiver" under the State's medical cannabis program and makes other conforming changes to facilitate the administration of medical cannabis to students. Nonpublic schools may establish a policy regarding the administration of medical cannabis to students.

Fiscal Summary

State Effect: No likely effect in FY 2020. Special fund expenditures for the commission increase by at least $75,700 in FY 2021 only for contractual costs to develop the required guidelines and generally implement the bill. Revenues are not materially affected.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	$0	$0	$0	$0	$0
SF Expenditure	0	75,700	0	0	0
Net Effect	$0	($75,700)	$0	$0	$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Expenditures for local school systems and local health departments (LHDs) may increase, and there is likely an operational impact. Federal funding for local schools may be affected, as discussed below.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Caregivers and Designated School Personnel

The definition of "caregiver" is expanded to include, for a qualifying patient younger than age 18, up to two additional adults designated by the parent or legal guardian. Additionally, a qualifying patient younger than age 18 may have up to four caregivers (under current law there is a limit of two parents or legal guardians). "Caregiver" does not include any designated school personnel authorized to administer medical cannabis to a student in accordance with the guidelines established under the bill.

A qualifying patient younger than age 18 may obtain medical cannabis only through the qualifying patient's caregiver *or* any designated school personnel authorized to administer medical cannabis to a student in accordance with guidelines established under the bill.

Beginning June 1, 2020, a caregiver may administer medical cannabis to a student (who is a qualifying patient of the caregiver) on school property, during school-sponsored activities, and while on a school bus.

Designated school personnel authorized to administer medical cannabis to a student are not required to register with the commission; they may administer to a student only medical cannabis that is obtained through the student's caregiver and in accordance with dosing, timing, and delivery route instructions as provided by the certifying provider's written instructions.

A school nurse may not be required to administer medical cannabis to a student who is a qualifying patient.

Legal Protections for Designated School Personnel

Designated school personnel authorized to administer medical cannabis to a student in accordance with established guidelines are not subject to arrest, prosecution, revocation of mandatory supervision, parole, or probation, or any civil or administrative penalty, including a civil penalty or disciplinary action by a professional licensing board; they may not be denied any right or privilege, for the medical use or possession of medical cannabis unless the act or omission constitutes gross negligence or wanton or willful misconduct.

Required Guidelines

The required guidelines must establish (1) the school personnel who are authorized to administer medical cannabis to a student who is a qualifying patient during school hours and school-sponsored activities and while on a school bus; (2) specific locations, including a requirement that a school allow the administration of medical cannabis in the school building, where medical cannabis may be administered to students during school hours and school-sponsored activities and while on a school bus; (3) procedures for educating any designated school personnel on safety considerations for patient use of medical cannabis as it relates to a school setting; (4) protocols to ensure students who are qualifying patients receive care during school hours and school-sponsored activities and while on a school bus; (5) security protocols for the possession, storage, and loss or theft of medical cannabis on school property; (6) a plan for the administration of medical cannabis that must include labeling as well as dosing, timing, and delivery route instructions as provided by the certifying provider's written instructions; (7) a clear prohibition on any method of administration of medical cannabis that includes smoking or vaping; (8) specified notice requirements, as necessary; (9) whether the medical cannabis may be retained on school premises, as specified; and (10) any other necessary guidelines on issues concerning the administration of medical cannabis during school hours and school-sponsored activities and while on a school bus to students who are qualifying patients.

In developing the guidelines, MBON and the commission must consider whether it is necessary to amend Title 8 of Health Occupations Article (which governs the practice of nursing) or any other State law to allow school nurses or other authorized designated school personnel to administer medical cannabis to a student who is a qualifying patient.

Required Report

By December 31, 2020, MBON and the commission must make recommendations to the General Assembly on any recommended amendments to Title 8 of the Health Occupations Article or any other State law to allow school nurses or other authorized designated school personnel to administer medical cannabis to a student who is a qualifying patient.

Nonpublic Schools

Nonpublic schools in the State are authorized to establish a policy to administer medical cannabis to students who are qualifying patients during school hours and school-sponsored activities.

Current Law/Background:

School Health Services

MSDE and the Maryland Department of Health (MDH) are required to jointly (1) develop public standards and guidelines for school health programs and (2) offer assistance to local boards of education and LHDs in their implementation. Additionally, local boards of education and LHDs must jointly develop and annually implement in-service training that covers specified topics, including orientation for all school personnel on the school health services program. At the beginning of each school year, all parents/guardians and students must be informed of the school health services program, including information on medications.

Pursuant to MSDE and MDH guidelines on the administration of medication in schools, all prescription medication must be ordered by a person authorized to prescribe medication. The guidelines also recommend that an approved medication administration/authorization form be developed that contains specified information including the dosage and the time and route of administration. The form must be signed by the authorized prescriber and the parent/guardian. The guidelines specify that medications should only be administered to students on school-sponsored trips when "absolutely necessary."

Natalie M. LaPrade Medical Cannabis Commission

The Natalie M. LaPrade Medical Cannabis Commission is responsible for implementation of the State's medical cannabis program, which is intended to make medical cannabis available to qualifying patients in a safe and effective manner. There is a framework to certify health care providers (including physicians, dentists, podiatrists, nurse practitioners, and nurse midwives), qualifying patients, and their caregivers to provide qualifying patients with medical cannabis legally under State law via written certification. As of January 2020, there were 37,363 registered patients, 88,594 certified patients, 8,003 caregivers, and 1,705 certifying providers. There are 169 medical cannabis patients who are minors.

A "qualifying patient" is an individual who has been provided a written certification by a certifying provider in accordance with a bona fide provider-patient relationship. If younger than age 18, a qualifying patient must have a caregiver. A "caregiver" is a person who has agreed to assist with a qualifying patient's medical use of cannabis and, for a qualifying patient younger than age 18, a parent or legal guardian. A qualifying patient may have no more than two caregivers, and a caregiver may serve no more than five qualifying patients at any time.

A qualifying patient with a written certification can obtain a 30-day supply of medical cannabis, which is generally defined as 120 grams of usable cannabis or, in the case of a

medical cannabis-infused product, 36 grams of delta-9-tetrahydrocannabinol (better known as THC). However, the written certification may include a written statement that certifies, in the provider's professional opinion, a standard 30-day supply of medical cannabis would be inadequate to meet the qualifying patient's medical needs. The first medical cannabis was available for sale in the State in 2017.

Federal Enforcement Guidance and Action Related to Cannabidiol

Although cannabis remains on the list of Schedule I drugs as a controlled dangerous substance, the federal government has been enforcing cannabis/marijuana provisions primarily pursuant to (1) guidelines issued by the U.S. Department of Justice (DOJ) and (2) appropriations riders passed by the U.S. Congress in every year since 2014 that prevent DOJ from using any of its funding to prevent states from "implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana."

DOJ published the "Ogden Memorandum" in October 2009, which deprioritized using federal law enforcement resources against state medical marijuana programs. In August 2013, DOJ published the "Cole Memorandum," which announced that it would focus on eight enforcement priorities when enforcing marijuana provisions of the federal Controlled Dangerous Substances Act. The guidelines also state that, although DOJ expects states with legalization laws to establish strict regulatory schemes that protect these eight federal interests, the department is deferring its right to challenge their legalization laws. On January 4, 2018, in a memorandum to all U.S. attorneys, former Attorney General Jefferson B. Sessions III announced that previous guidance regarding federal marijuana prosecutions was rescinded, effective immediately. Current Attorney General William Barr has pledged to not go after marijuana companies that comply with state laws, but there has been no official DOJ guidance since the 2018 memorandum rescinding prior guidance.

Cannabidiol (better known as CBD) is one of the naturally occurring cannabinoids found in cannabis plants (*Cannabis sativa L.*). Although CBD is a component of cannabis plants, it does not cause the "high" associated with smoking or ingesting marijuana. According to the U.S. Food and Drug Administration (FDA), the agency has not approved a marketing application for cannabis for the treatment of any disease or condition. However, in 2018, FDA approved Epidiolex, a drug containing a purified form of CBD, for the treatment of seizures associated with lennox-gastaut syndrome or dravet syndrome in patients two years of age and older. There are no other FDA-approved drug products that contain CBD or cannabis.

Medical Cannabis Programs in Other States

According to the National Conference of State Legislatures, 33 states (including Maryland), the District of Columbia, Guam, and Puerto Rico have comprehensive public medical

cannabis programs. Additionally, another 13 states allow for the use of low THC, high CBD products for medical reasons in limited situations or as a legal defense. Further, 26 states (including Maryland) and the District of Columbia have decriminalized small amounts of marijuana.

According to the commission, as of July 2019, nine states authorize medical cannabis to be administered on school property. There are four primary policy distinctions between these states' policies: (1) who can administer the medical cannabis (self-administration, school staff, and/or parents or guardians); (2) where the medical cannabis can be administered (on school grounds, on a school bus, at a school-sponsored event); (3) whether medical cannabis can be stored on school grounds; and (4) whether a school is required or permitted to allow medical cannabis administration on school property. Additionally, the Council of the District of Columbia passed emergency legislation in September 2019 to clarify that existing city law does not prohibit students with medical cannabis licenses from consuming medical cannabis on school grounds.

Across the country, there is broad concern that allowing students to consume medical cannabis on school grounds and/or the administration of medical cannabis by school staff could jeopardize federal funding for schools. However, the Department of Legislative Services (DLS) was unable to find any specific examples where this occurred.

State Expenditures: Special fund expenditures for the commission increase by $75,664 in fiscal 2021, which assumes the commission delays hiring staff until July 1, 2020 (but no later than that date), to meet the bill's December 31, 2020 deadline for developing the required guidelines and making recommendations related to further statutory changes. This estimate reflects the cost of hiring one full-time contractual health policy analyst to coordinate the development of the required guidelines, consult with MBON to develop and submit the required report, and generally implement the bill's requirements. It includes a salary, fringe benefits, and one-time start-up costs. This estimate assumes that the commission needs to assist MSDE in developing the required guidelines, and the commission takes the lead development role for the procedures and protocols.

Contractual Position	1
Salary and Fringe Benefits	$70,139
Other Operating Expenses	5,525
Total FY 2021 State Expenditures	**$75,664**

Future years reflect termination of the contractual employee after the first year. 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.

The bill is not anticipated to have a significant impact on the number of registered caregivers in the State.

MSDE can consult and work with the commission to develop the required guidelines and otherwise implement the bill's requirements with existing budgeted staff and resources.

MDH advises that it needs to hire one full-time permanent employee to coordinate with the commission and MSDE on the development of the required guidelines and otherwise implement the bill. DLS disagrees because MDH is not tasked with any role or duties under the bill. Instead, the primary responsibilities fall under the commission's purview.

DLS assumes that MBON can consult with the commission and make recommendations on any statutory changes with existing budgeted staff and resources.

Local Expenditures: Expenditures for local school systems and LHDs may increase on an annual basis beginning in fiscal 2021 to purchase additional locked medication cabinets/carts and portable locked medication carrier boxes, hire additional personnel, and generally administer medical cannabis to students who are qualifying patients pursuant to the guidelines developed under the bill. Actual expenditures depend on a number of unknown factors, including existing supplies, the guidelines developed by MSDE and the commission, the number of affected students, and how often affected students need medical cannabis to be administered. However, these expenditures could be significant for some local school systems.

Local Revenues: Having school staff administer medical cannabis to students who are qualifying patients on public school grounds may affect federal funding for local schools. This potential loss of federal revenues is an overarching concern for schools across the country, and Maryland schools receive significant levels of federal funding. However, given the uncertainty with regard to enforcement of medical cannabis provisions at the federal level, DLS is unable to accurately estimate whether any federal funding for local schools is in jeopardy.

Additional Comments: Potential impacts on expenditures and revenues for nonpublic schools will be similar to those described above for public schools.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 604 (Senator Feldman, *et al.*) - Education, Health, and Environmental Affairs and Finance.

Information Source(s): Maryland State Department of Education; Maryland Center for School Safety; Maryland Department of Health; Baltimore City Public Schools; Baltimore County Public Schools; Montgomery County Public Schools; Forbes Media, LLC; University of Maryland Francis King Carey School of Law; U.S. Department of Justice; U.S. Food and Drug Administration; *Washington Post*; *Los Angeles Times*; *Miami New Times*; National Conference of State Legislatures; Department of Legislative Services

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