

# **POLICY SERVICES**

## **ADVISORY**

Volume 16, Number 2

July 2019

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### **Policy Advisory Discussion**

**Policy Advisory 184- JLCD Administering Medicines to Students.** Senate Bill 204 and 406 passed in the 2019 Legislative Session enacted a new section of the Public School Code amending a section of the Lynn and Erin Compassionate Use Act and authorizing the possession, storage and administration of medical cannabis by required policy in certain school settings. Districts should be aware that there are prohibitions and provisions in the bill not included in this policy, regulation, or exhibit. Policy Services has concluded that it is not necessary to include these as they are in other policies recommended by Policy Services. They are: no self administration; administration of cannabis will not disturb the school setting; and no discrimination in authorized cannabis administration. Many rules regarding drugs/medicines and their administration in schools are already in policies on conduct, tobacco use, administering and drug use. See the cross references at the bottom of the policy for this type of information. Districts are encouraged to have administration and staff read the content of Senate Bill 204 and Senate Bill 406 so they make no errors on implementation or as they carry

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out their obligations and requirements. Senate Bill 204 and Senate Bill 406 have many of the same provisions but 204 is more specific regarding school policies.

The immediate issue raised by this legislation is the conflict with Federal legislation such as 21 CFR 1308.11-15 defining Marijuana (Cannabis) as a prohibited hallucinogenic drug and 34 CFR 85.630 regarding the statement of assurances that federal fund grantees must make, assuring that they maintain a Drug Free Workplace. Policy Services does not have a definitive observation of the result of considering these legal issues but will provide some overview. For informational purposes the pharmacological listings can be found on the Drug Enforcement Administration website, at: <https://www.deadiversion.usdoj.gov/pubs/manuals/pharm2/index.html>.

The federal government continues to classify marijuana as a schedule I controlled substance. Drugs listed in schedule I have no currently accepted medical use in treatment and may not be prescribed, administered, or dispensed for medical use. Therefore, under federal law, no individuals, including pharmacists, can legally dispense medical marijuana, even in those states that have passed medical marijuana legislation.

Policy Services can say that there is some legislation at the Federal Level that prohibits the Department of Justice from spending funds to interfere with the implementation of state medical cannabis laws. Such a law is the Rohrbacher Farr amendment effective to September 30, 2019. Also, the recently enacted 2018 Farm Bill which removed hemp (a specific cannabis plant) from the Controlled Substances Act and placed it as an agriculture product under the Department of Agriculture. As an agriculture product the production and manufacture of hemp will be controlled. These laws, however, would not prevent the U.S Department of Education from taking action as a grantor to rescind educational funding under the Drug Free Workplace, but no action of this nature has been observed in the recent past.

Most districts are using standard procedures for the acceptance and administration of medications in school. Those using the recommended policies and procedures of the New Mexico Policy Services will find that those documents discourage student possession and use of any and all medications, unless they are to be self administered in accord with statutory authorization. What Administering Medicines to Students does as a policy and procedure is to provide the ground work for control of all medications coming into a school setting as a means of preventing the possession, sale or use of illicit drugs or medicines. Upon review of the new laws on cannabis administration in schools, policy services determined that with a few modifications the current policies and procedures would serve the purposes indicated in those new laws.

Having said this, Policy Services has made several revisions to policy regarding Administering Medicines to Students, added an exhibit and made some minor corrections in terminology and

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regulation. Policy Services has placed medical cannabis in the same category as prescription medications, recognizing that no pharmacy can provide medical cannabis (it is unclear regarding CBD oils produced from Hemp at this time). Some of the changes are housekeeping and others are to facilitate the administration of medical cannabis if such is determined to be necessary in a New Mexico public school.

A change from the title Physician to a more generic health care professional was made to extend the persons who have authority to prescribe medications as this has occurred in recent years. The specified requirements in this policy as applied to cannabis includes a clause that circumscribes the parent's right to administer medical cannabis during school hours with additional requirements applicable to cannabis in the Exhibit JLDC-EB.

The medication protocol in JLCD-R was modified to recognize the parent provided documents that will be required in order to allow medical cannabis to be administered by school personnel. Also changed was the category of the employee who can be designated to administer medications. This was changed from a school employee to a "licensed school employee" per 22-1-2 NMSA which states "'licensed school employee" means teachers, school administrators and instructional support providers". That is further defined in part A of 22-10A-3 NMSA which was recently changed by House Bill 431 to say;

" Except as otherwise provided in this subsection, any person teaching, supervising an instructional program or providing instructional support services in a public school; any person administering in a public school; and any person providing health care and administering medications or performing medical procedures in a public school shall hold a valid license or certificate from the department authorizing the person to perform that function."

This definition could be interpreted to mean that only those persons medically licensed or certificated by the Public Education Department can administer medications in a school setting. Districts must be made aware that should this limitation be placed on administering medications there are some implications that need to be reviewed. Districts could be prohibited from administering medications to students if no properly licensed or certificated personnel are available whether this is prescription medication, medical cannabis or over the counter medication should the definition above be interpreted in the manner discussed. This could mean that those districts with health aids and those who may be administering health care and medication by other than a licensed or certificated employees may need to make adjustments in their practices.

JLCD-EB Administering Medical Cannabis to Students was added to provide the guidance for school personnel in procuring the required permissions, certifications and releases per Senate Bill 204 and 406.

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## Exception

Senate Bill 204 provides that school districts do not have to adopt policies and procedures to authorize cannabis possession, storage and administration of medical cannabis if the district reasonably determines that it would lose, or has lost, federal funding as a result of implementing these provisions. It is suggested that Districts consult their legal counsel if they intend to take this approach to the medical marijuana policy issue.

**Materials of a legal nature in support of this advisory may be found following the text of the policies at the websites cited.** If you have any questions, or requests call Policy Services at (505) 469-0193 or E-mail Dr. Donn Williams, Policy Services Director at [nmsbapolicy@cox.net].

**This Material is written for information only and is not intended as legal advice. Please consult your attorney if legal explanations are needed.**

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### ADMINISTERING MEDICINES TO STUDENTS

Under certain circumstances, when it is necessary for a student to take medicine during school hours, the District will cooperate with the ~~family physician~~ health care professional and the parents if the following requirements are met:

- For prescription medication and medical cannabis ~~There~~ there must be a written order from the ~~physician~~ authorized health care professional stating the name of the medicine, the dosage, and the time it is to be given.
- Any order or plan for administering medications shall only be valid during the school year provided and while the student is enrolled.
- There must be written permission from the parent to allow the school or the student to administer the prescription medication, cannabis or over the counter medicine. Appropriate forms are available from the school office.
- The medicine must come to the school office in the prescription container or, if it is over-the-counter medication or cannabis, in the original container with all warnings and directions intact.
- A student should not carry medication to and from school unless authorized by the district to self-administer.
- Any and all medications left at the end of the current school year must be inventoried and picked up by the parents within the week following the end of school or they will be destroyed. Clean-up and witnessed destruction of any medical spillage or destruction of soiled medication must be accomplished within the same day in which destruction, spillage or waste occurs.

A responsible adult should bring medications to the school office if necessary. If medications are necessary for emergency use during transportation a written health management plan shall

be prepared in consultation with the parents and school authorities indicating where the medication will be located during transportation and who will administer the medication.

In the case of medical cannabis, should there be no licensed school employee who is willing upon designation to administer medication, a written health management plan shall be prepared in consultation with the parents and school authorities indicating the conditions under which the parent may be present to administer the medication. This will include directions on where and how as well as when the medication may be administered.

The District reserves the right, in accordance with procedures established by the Superintendent, to circumscribe or disallow the use or administration of any medication on school premises if the threat of abuse or misuse of the medicine may pose a risk of harm to a member or members of the student population.

This policy and any related policies or amendments to such policies shall be forwarded to the District liability insurance carrier for review.

*Adopted:*    date of manual adoption

LEGAL REF.:        22-1-2 NMSA  
                          22-5-4.3 NMSA  
                          26-2B-1 et seq NMSA  
                          22-10A-3 NMSA  
                          6.12.2.9 NMAC  
                          6.12.10.1 et seq NMAC  
                          6.41.4.9 NMAC

CROSS REF.:        EBC-RC - Emergencies (First Aid)  
                          EEAB - Special Education Student Transportation (Students with Special  
                          Transportation Needs)  
                          GBEC - Drug Free Workplace  
                          GBECA - Non Medical Use or Abuse of Drugs or Alcohol  
                          JICG - Tobacco Use by StudentsJICG  
                          JIC - Student Conduct  
                          KI - Visitors to Schools

## REGULATION

## REGULATION

ADMINISTERING MEDICINES  
TO STUDENTS

## (Medication Procedures)

**Prescription Drugs And Medical Cannabis**

For occasions when it is necessary for a student to receive a prescription drug or medical cannabis during the school day, the following procedure has been established to ensure the protection of the school and the student and to assure compliance with existing rules and regulations:

***Administration by school personnel:***

- The medication must be prescribed by ~~a physician~~ an authorized health care professional.
- The parent or guardian must provide written permission to administer the medicine to the student (additionally, for medical cannabis a written treatment plan, a copy of written certification for use of cannabis, and a signed release of school liability). Appropriate forms or directions are available from the school office.
- The medication must come to the school office in the ~~prescription~~ original container as put up by the pharmacist or provider. Written directions from the ~~physician~~ authorized health care professional or pharmacist must state the name of the patient, the name of the medicine, the dosage, and the time it is to be given. ~~—and—~~ In the case of asthma, ~~or anaphylaxis episodes, or cannabis,~~ a written treatment plan for management ing asthma or anaphylaxis episodes of the student student's medications to or from school or school-sponsored activities must be developed.
- An administrator may designate and train a licensed school employee to administer, possess and store the medication.
- Each administration of ~~prescription drugs~~ medications must be documented, making a record of the student having received the medication, the time and dosage administered.



- Drugs must be kept in their original containers in a locked medicine cabinet with access limited to administratively designated personnel.

***Self-administration:***

- When the ~~physician~~ authorized health care professional feels it is necessary for the student to carry and self-administer the medication, the ~~physician~~ authorized health care professional shall provide written recommendations, to be attached to the signed parent permission form (not available for cannabis).
- The parent or guardian must provide written permission for the student to self-administer and carry the medication. Appropriate forms are available from the school office.
- The child must demonstrate the ability to self administer to the medication provider and school nurse or other school personnel.
- The medication must come in the prescription container as put up by the pharmacist.

***Asthma medication and emergency anaphylaxis self administration:***

- When the physician feels it is necessary for the student to carry and self-administer either of these medications, the physician shall provide written recommendations, to be attached to the signed parent permission form, including a written treatment plan for managing asthma or anaphylaxis episodes; and
- Backup medication may be provided by the parent. Such medication must come in the prescription container as prepared by the pharmacist with a written permission to administer on an emergency basis from a parent and shall be kept in a locked area in the office.

**Over-the-Counter Medication**

When it is necessary for a student to receive a medicine that does not require a prescription order but is sold, offered, promoted, and advertised to the general public, the following procedure has been established to ensure the protection of the school and the student:

***Administration by school personnel:***

- Written permission must be provided by the parent or guardian for the administration of specific over-the-counter drugs medication.

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- Any over-the-counter ~~drug or~~ medicine sent by the parent to be administered to a student must come to the school office in the original manufacturer's packaging with all directions, dosages, compound contents, and proportions clearly marked.
- An administrator may designate a licensed school employee to administer a specific over-the-counter ~~drug~~ medication.
- Each instance of administration of an over-the-counter ~~drugs~~ medication must be documented in the daily log.
- Over-the-counter ~~drugs~~ medication must be kept in their original containers in a locked medicine cabinet.

#### ***Self-administration:***

- Written permission must be provided by the parent or guardian for the administration of specific over-the-counter ~~drugs~~ medication by the student.
- Over-the-counter ~~drugs or~~ medicine sent by the parent to be administered by the student must be kept by the student in the original manufacturer's packaging, with all directions, dosages, compound contents, and proportions clearly marked.
- *Necessity* for self-administration of an over-the-counter ~~drug or~~ medicine shall be determined by the student's physician authorized health care professional and must be verified by a that person's signed ~~physician's~~ statement attached to the parent or guardian permission form, indicating the specific ~~drug or~~ medicine.

#### **Protection of Students**

Use or administration of medication on school premises may be disallowed or strictly limited if it is determined by the Superintendent, in consultation with medical personnel, that a threat of abuse or misuse of the medicine may pose a risk of harm to a member of the student population.

The student shall take extraordinary precautions to keep secure any medication or drug, and under no circumstances shall make available, provide, or give the item to another person. The student shall immediately report the loss or theft of any medication brought onto school campus. Violation of this regulation may subject the student to disciplinary action.

EXHIBIT

EXHIBIT

**ADMINISTERING MEDICINE  
TO STUDENTS****REQUEST FOR GIVING MEDICINE AT SCHOOL**

Name \_\_\_\_\_ Grade \_\_\_\_\_

Teacher \_\_\_\_\_ School \_\_\_\_\_

Medication \_\_\_\_\_

Diagnosis/reason for giving \_\_\_\_\_

Time to be given \_\_\_\_\_ a.m. Time to be given \_\_\_\_\_ p.m.

Dates from \_\_\_\_\_ to \_\_\_\_\_

Prescription medication must be in the original container as prepared by a pharmacist and labeled, including the patient name, name of medication, dosage, and time to be given. An over-the-counter medication must be in the original packaging, with all directions, dosages, compound contents, and proportions clearly marked. Student misuse of medication being self-administered may result in seizure and disciplinary action.

\_\_\_\_\_  
Parent's or Guardian's Signature\_\_\_\_\_  
Date

A signed ~~physician's~~ authorized health care professional's statement indicating the necessity must accompany any request for self-administration of medicine, whether it is prescription or over-the-counter medicine.

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EXHIBIT

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**ADMINISTERING MEDICAL  
CANNABIS TO STUDENTS**

REQUEST FOR GIVING MEDICAL CANNABIS AT SCHOOL

Student Name \_\_\_\_\_ Grade \_\_\_\_\_

Teacher \_\_\_\_\_ or Counselor \_\_\_\_\_ School \_\_\_\_\_

Specific Medication Name \_\_\_\_\_

(Must be non-aerosol, cannot be smoked or inhaled as a vapor or by burning)

Time to be given \_\_\_\_\_ a.m. Time to be given \_\_\_\_\_ p.m.

Dates from \_\_\_\_\_ to \_\_\_\_\_

Medication must be in the original packaging, with all directions, dosages, compound contents, and proportions clearly marked.

Attached to this request must be:

- a copy of the qualified student's written certification for use of medical cannabis pursuant to the Lynn and Erin Compassionate Use Act
- a written treatment plan for administration of medical cannabis agreed to and signed by the school principal, qualified student's parent or legal guardian and certifying medical health care professional.
- a written statement from the qualified student's parents or legal guardian releasing the school and personnel from liability as follows:
  - ▲ releases from civil liability the following persons and entities for acting in accordance with the provisions of Chapter 261, Laws of 2019 and this rule, as well as the Lynn and Erin Compassionate Use Act and applicable department of health rules;

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- ♦ school districts, school district personnel and volunteers, schools, school personnel and volunteers, local school boards, and local school board members..
- ▲ releases the persons and entities from any liability and reimbursement claims for costs associated with accidental spillage or waste of medical cannabis;
- ▲ acknowledge that the qualified student shall not be entitled to the implementation of the provisions of Chapter 261, Laws of 2019 and this rule, as well as the Lynn and Erin Compassionate Use Act and applicable department of health rules, outside of this state

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Parent's or Guardian's Signature

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Date

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Parent's or Guardian's Printed Name

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## RELEVANT STATUTES, RULES AND CITATIONS

The referenced Senate Bills can be found by entering the following web addresses into the Browser search line in your preferred search engine.

SENATE BILL 406 CAN BE FOUND AT THE FOLLOWING WEB LOCATION

<http://sos.state.nm.us/uploads/files/CH261-SB204-2019.pdf>

SENATE BILL 204 CAN BE FOUND AT THE FOLLOWING WEB LOCATION

<http://sos.state.nm.us/uploads/files/CH261-SB204-2019.pdf>

### **PROPOSED PUBLIC EDUCATION DEPARTMENT RULE 6.12.10 NMAC, Medical Cannabis in Schools**

Copies of the proposed new rule may be accessed through the page titled "Rule Notification" on the PED's website at <http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>, or may be obtained from the Policy Division at (505) 827-7889 during regular business hours.