

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 331 (Delegate Lisanti, *et al.*)
 Health and Government Operations and
 Ways and Means

Public Schools – Medical Cannabis – Guidelines for Administration to Students
 (Connor’s Courage)

This bill requires the Maryland State Department of Education (MSDE) and the Natalie M. LaPrade Medical Cannabis Commission to jointly develop guidelines for public schools on the administration of medical cannabis during school hours and school-sponsored after-school activities to students who are qualifying patients. By December 1, 2020, MSDE and the commission must provide specified technical assistance to schools and develop a process to monitor the implementation of the guidelines. **The bill takes effect July 1, 2020.**

Fiscal Summary

State Effect: Special fund expenditures for the commission increase by \$127,800 in FY 2021 only for contractual costs to develop the required guidelines and prepare training and educational materials. Revenues are not affected.

| (in dollars) | FY 2021 | FY 2022 | FY 2023 | FY 2024 | FY 2025 |
|----------------|-------------|---------|---------|---------|---------|
| Revenues | \$0 | \$0 | \$0 | \$0 | \$0 |
| SF Expenditure | 127,800 | 0 | 0 | 0 | 0 |
| Net Effect | (\$127,800) | \$0 | \$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: The required guidelines must include (1) procedures for educating school nurses on specified issues relating to medical cannabis; (2) protocols to ensure students who are qualifying patients receive care during school hours and school-sponsored activities, as determined by specified individuals; (3) security protocols for the possession, storage, and loss or theft of medical cannabis on school property; (4) appropriate methods for administering medical cannabis by a school nurse during school hours and school-sponsored activities; (5) specified notice requirements, as necessary; and (6) any other issues concerning the administration of medical cannabis during school hours and school-sponsored activities to students who are qualifying patients.

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 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 \$127,778 in fiscal 2021, which accounts for the bill's July 1, 2020 effective date. This estimate reflects the cost of hiring one full-time contractual health policy analyst for six months to coordinate the development of the required guidelines, provide technical assistance to schools, and generally coordinate the bill's requirements. It includes a salary, fringe benefits, one-time start-up costs, and additional contractual costs to prepare and create (including printing) training and guidance materials for public schools in the State. The information and assumptions used in calculating the estimate are stated below:

- The commission needs to assist MSDE to develop the required guidelines, and the commission takes the lead development role of the procedures, protocols, and training materials.
- Contractual costs for the commission will be similar to those incurred to provide guidance and develop training materials for medical cannabis dispensary agents.

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| Contractual Position | 1 |
| Salary and Fringe Benefits | \$35,070 |
| Other Contractual Expenditures | 87,500 |
| Operating Expenses | <u>5,208</u> |
| Total FY 2021 State Expenditures | \$127,778 |

Future years reflect termination of the contractual employee after six months and the termination of other contractual costs once the training materials, protocols, and procedures are developed. 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.

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.

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 nurses, 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. DLS notes that the bill does not *require* a public school to administer or allow the administration of medical cannabis to students in school or at school-sponsored activities.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 605 (Senator Feldman) - 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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