

Medical Cannabis in Schools Policy Framework for Compliance with NMAC 6.12.10

Background and Authority

Senate Bill 204, Medical Marijuana in Schools, and Senate Bill 406, Medical Marijuana Changes, became law on June 14, 2019 and amended the Public School Code by providing parameters for the possession, storage, and administration of medical cannabis to qualified students for use in school settings (§22-33-5 NMSA 1978).

The New Mexico Public Education Department (NMPED), through the rulemaking process, developed New Mexico Administrative Code (NMAC) 6.12.10 in response to this new law.

New Mexico joins Colorado, Delaware, Illinois, Maine, New Jersey, Pennsylvania, and Washington in legalizing the storage and possession on behalf of, and the administration of medical marijuana to, qualified students in schools.

In New Mexico, a qualified student means a student who demonstrates evidence to the school that the student is authorized as a qualified patient pursuant to the Lynn and Erin Compassionate Use Act (§ 26-2B-1 et. seq. NMSA 1978) to carry and use medical cannabis. This evidence, in the form of a written and signed certification provided by a certifying practitioner, certifies that the qualified student has a debilitating medical condition pursuant to the Lynn and Erin Compassionate Use Act. This written certification also attests that the certifying practitioner believes the potential health benefits of the medical cannabis would likely outweigh the health risks for the qualified student.

The changes to the Public School Code, allowing the use of medical cannabis for qualified students in a school setting, require each local school board and each charter school governing body to establish policies and procedures for the possession, storage, and administration of medical cannabis by both primary caregivers (parents/legal guardians) and/or designated school staff. Policies and procedures established by local school boards or governing bodies shall also establish the responsibilities of the qualified student's primary caregiver in order for a qualified student to be administered medical cannabis in the school setting.

The NMPED has developed the following policy framework in order to assist local school boards and charter school governing bodies as they develop policies and procedures on medical cannabis in school settings. This policy framework exclusively addresses medical cannabis in school settings. Local school boards and governing bodies may wish to consider separate policies and procedures regarding hemp products in the school setting.

The policy framework below is for information purposes only and does not constitute legal advice. Local school boards and governing bodies may wish to consult with independent legal counsel as local policies and procedures are developed, adopted, and implemented.

Primary Caregivers (Parents/Legal Guardians) and/or Designated School Personnel

Policies regarding medical cannabis in schools, compliant with NMAC 6.12.10, must address who will be authorized to possess, store and administer medical cannabis to a qualified student. These individuals may be primary caregivers (parents/legal guardians) and/or designated school personnel, excluding school nurses under current law.

(<https://webnew.ped.state.nm.us/bureaus/safe-healthy-schools/medical-cannabis-in-schools/>).

Designated school personnel may be assigned to perform any or all functions of possession, storage, and administration of medical cannabis. Designated school personnel may be individuals who volunteer to perform associated functions or may be school personnel assigned by the school administrator. The assignment of designated personnel may be declined by any individual without reprisal or repercussion.

Each local school board or charter school governing body shall provide at least an annual training on the district/charter medical cannabis policy and procedures in alignment with the provisions in (SB 204/SB406) and NMAC 6.12.10. The annual training may be determined at the local level.

Responsibilities of Primary Caregivers (Parents/Legal Guardians)

Policies and procedures regarding medical cannabis in schools, compliant with NMAC 6.12.10, must require primary caregivers to first demonstrate evidence to the school that the student is authorized as a qualified patient pursuant to the Lynn and Erin Compassionate Use Act. In addition, the primary caregiver must provide the following documents to the school in advance:

- A copy of the qualified student's written certification.
- A copy of the patient's New Mexico Department of Health's (NMDOH) issued ID card, which includes the name of the primary caregiver.
- A written treatment plan (an example may be found at <https://webnew.ped.state.nm.us/bureaus/safe-healthy-schools/medical-cannabis-in-schools/>) that includes:
 - Affirmation of qualifying debilitating medical condition;
 - Recommended dosage allotment;
 - Recommended frequency of administration; and,
 - Signature of the primary caregiver and the certifying practitioner.
- A signed Health Insurance Portability and Accountability Act (HIPAA) authorization, using the HIPAA authorization form posted on the NMDOH's website (<http://nmhealth.org/publication/view/form/137/>) that permits the school to obtain current information from the NMDOH regarding the enrollment status of the qualified student in the NMDOH's Medical Cannabis Program. The HIPAA authorization form shall be retained as a medical record.
- A written release of liability.

Policies and procedures must indicate that a written certification and a written treatment plan shall be valid for no more than one year from the date of issuance and shall be presented to the

school at, or prior to, the beginning of the school year for which the written certification and written treatment plan shall apply.

Policies and procedures must require the primary caregiver to pick up, from the designated school personnel, any unused medical cannabis at the end of each school year or upon disenrollment, withdrawal, transfer, or graduation of the qualified student.

Policies and procedures must require the primary caregiver to provide the written certification and a written treatment plan, a new release from liability, and a new package or container with clearly labeled identifiers including the qualified student's name, date of birth, and dosage allotment, upon enrollment in a new public school following disenrollment, withdrawal, transfer, or graduation from another school.

Medical Cannabis in School Settings

Policies and procedures regarding medical cannabis in schools, compliant with NMAC 6.12.10, must:

- Limit the form of medical cannabis to a non-refrigerated capsule, extract, or concentrate that is ingested orally and that is not inhaled in particulate form as a vapor or by burning.
- Prohibit students from possessing, storing, or administering medical cannabis to themselves in the absence of a primary caregiver or designated school personnel, in a school setting. Local policy may allow the self-administration of medical cannabis in the presence of the primary caregiver or designated school personnel. Consideration should be given to the age and capability of the qualified student to self-administer medical cannabis within these parameters.
- Require documented witness of clean up and destruction of medical cannabis in the event of spillage or waste. The primary caregiver must be notified the same day the spillage or waste occurs.
- Address the parameters for the storage, possession, and administration of medical cannabis.

Address the definition of "school settings," which extends to offsite school-sponsored activities, as well as the transport to and from such activities.

Administration of Medical Cannabis in the School Setting

Policies and procedures regarding medical cannabis in schools, compliant with NMAC 6.12.10, must allow the administration of medical cannabis, in accordance with the qualified student's required treatment plan, by primary caregivers and/or designated school personnel. Policies and procedures must address the requirement that the administration of medical cannabis not disrupt the education environment and not cause medical cannabis exposure to other students. Schools may wish to designate a specific location for the safe administration of medical cannabis. Self-administration by the qualified student, without the presence of the primary caregiver or designated school personnel, is to be prohibited. Finally, it is required that school district and

charter school policies prohibit the disciplining of any school employee who refuses to administer the medical cannabis to the qualified student.

Release of Liability

Policies and procedures regarding medical cannabis in schools, compliant with NMAC 6.12.10, must ensure that the primary caregiver signs and submits a written release of liability that releases school districts, school district personnel and volunteers, schools, school personnel and volunteers, local school boards, and local school board members from civil liability for acting in accordance with the provisions of the Lynn and Erin Compassionate Use Act and the NMPED rule for Medical Cannabis in Schools. The written release must release school districts, school district personnel and volunteers, schools, school personnel and volunteers, local school boards, and local school board members from any liability and reimbursement claims for costs associated with accidental spillage or waste of medical cannabis. The written release must include an acknowledgement that the qualified student shall not be entitled to use medical cannabis outside the state of New Mexico.

Exemption from Rule

A school district or charter school may seek an exemption from developing a policy on medical cannabis, compliant with NMAC 6.12.10, with the submission to the NMPED of electronic communication from the federal government that implementation of NMAC 6.12.10 would result in federal funding being withheld from the school district or charter school.

The Secretary of Education will review the electronic communication to confirm compliance with the section of the rule that allows for an exemption and communicate the exemption to the school district or charter school. The school district or charter school must subsequently post on its website the written communication from the federal government and notice of exemption from implementing NMAC 6.12.10.

A school district or charter school that has indicated exemption from implementing this rule may be subject to an appeal of the exemption by the primary caregiver of a qualified student. The primary caregiver may submit a signed letter to the Secretary of the NMPED detailing the basis of the appeal. Based on what is provided to the NMPED, the Secretary may request additional documentation from the primary caregiver and/or the school district or charter school within ten days of receipt of the request for additional information as sent by the Secretary. The Secretary will provide a decision regarding the appeal within thirty days of the receipt of the appeal or receipt of the request for additional information. The Secretary has the option of scheduling a hearing within sixty days of receipt of the appeal. If a hearing is scheduled, a representative from the school district or charter school shall participate in the hearing as conducted by the Secretary or the Secretary's designee. In the event of a hearing, a final decision on the appeal would be issued within thirty days of the hearing.

Further information may be found at the NMPED's Safe and Healthy Schools Bureau website: <https://webnew.ped.state.nm.us/bureaus/safe-healthy-schools/>