

Proposed Rule Abstract

1. **Agency:** Public Education Department
2. **Rule Citation:** 6.12.10 NMAC, Medical Cannabis in Schools
3. **Rulemaking Action:** New Rule
4. **Register Issue and Date of Notice of Proposed Rulemaking:**
5. **Effective Date:** August 27, 2019
6. **Citation to Specific Legal Authority:** Sections 9-24-8, 22-2-1, and 22-2-2 NMSA 1978
7. **Short Explanation of the Rule's Purpose:** To establish the criteria for the possession, storage, and administration of medical cannabis to qualified students for use in the school setting. The proposed rule also outlines medical cannabis restrictions, parental responsibilities, and school district and charter school exemptions.
8. **Link to Full Text of the Rule:** https://webnew.ped.state.nm.us/wp-content/uploads/2019/06/6.12.10_Med-Cannabis-In-Schools-Integrated_webFINAL.docx
9. **How Information on the Rule Can Be Obtained:** From the New Mexico Public Education Department, 300 Don Gaspar Avenue, Room 101, Santa Fe, NM 87501 or from rule.feedback@state.nm.us
10. **Comment Period and Deadlines:** June 25, 2019 to July 26, 2019 at 5:00 p.m. Written comments may be submitted to the New Mexico Public Education Department, 300 Don Gaspar Avenue, Room 101, Santa Fe, NM 87501 or to rule.feedback@state.nm.us
11. **Rule Hearing:** July 26, 2019, from 9:00 a.m. to 11:00 a.m., in Mabry Hall located at the Jerry Apodaca Education Building, 300 Don Gaspar Avenue, Santa Fe, NM 87501
12. **Link to Permanent Agency Rulemaking Record:**
<http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>

Summary of Proposed Rule

The June 25, 2019 issue of the *New Mexico Register* contained a notice of proposed rulemaking for Part 10 of 6.12 NMAC, Medical Cannabis in Schools. The proposed rule would provide school districts, local school boards, state-chartered charter schools, and governing bodies of state-chartered charter schools parameters for establishing policies and procedures for the possession, storage, and administration of medical cannabis to qualified students for use in school settings. A school district or charter school may seek an exemption from implementing the provisions of the rule if it receives written communication from the federal government that implementation would result in federal education funding being withheld or withdrawn. These proposed changes implement requirements of Laws 2019, Chapter 261. See, **Attachment, Proposed Rule, 6.12.10 NMAC, Medical Cannabis in Schools.**

Analysis

As statutory authority for the proposed rulemaking, the New Mexico Public Education Department (PED) cites Section 9-24-8 NMSA 1978 and Sections 22-2-1 through 22-2-2 NMSA 1978, which grant the department general rulemaking authority. PED should cite Laws 2019, Chapter 261 as statutory authority for the proposed rulemaking.

The Lynn and Erin Compassionate Use Act allows for the use of medical cannabis in a regulated system for alleviating symptoms caused by debilitating medical conditions and their medical treatments.

The proposed rule would provide parameters for establishing policies and procedures for the possession, storage, and administration of medical cannabis to qualified students for use in school settings. The rule would define medical cannabis as cannabis recommended for treatment in a written certification by a certified practitioner of a debilitating medical condition as defined in the Lynn and Erin Compassionate Use Act. The medical cannabis would need to be dispensed by a cannabis producer that has received approval from the New Mexico Department of Health to sell medical cannabis, and must be in the form of a capsule, extract, or concentrate to be ingested through the mouth. The proposed rule would prohibit the medical cannabis from being an aerosol product consumable through smoking or in particulate form as a vapor or by burning; a food or beverage product; or a salve, balm, or other topical product.

The proposed rule defines “school setting” as any of the following locations during a school day:

- A school building;
- A school bus used within the state during, in transit to, or in transit from a school-sponsored activity;
- A public vehicle used within the state during, in transit to, or in transit from a school-sponsored activity in the state; or
- A public site in the state where a school-sponsored activity takes place.

The rule would prohibit schools from disciplining or denying eligibility to attend school to a qualified student on the basis that the student requires medical cannabis.

Possession, Storage, and Administration of Medical Cannabis. School district and charter school policies would need to require the provision of a secure location with a locked storage container that is accessible only by designated school personnel.

The rule defines “designated school personnel” as a school employee whom a public school, charter school, or school district authorizes to possess, store, and administer medical cannabis to a qualified student in accordance with the law.

Designated school personnel responsible for storage of the qualified student’s medical cannabis would be required to return any unused medical cannabis to the primary caregiver at the end of each school year or upon disenrollment, withdrawal, transfer, or graduation of the qualified student, whichever occurs first. Each local school board or governing body would be required to identify the designated school personnel responsible for the possession and storage of medical cannabis on behalf of a qualified student and the administration of medical cannabis to a qualified student. Additionally, each local school board or governing body of a state-chartered charter school would be required to train designated school personnel on the possession, storage, and administration of medical cannabis. School district and charter school policies would be required to

prohibit students from possessing, storing, and self-administering medical cannabis in a school setting.

Primary Caregiver Responsibilities. The rule would require school districts and charter schools to establish responsibilities for primary caregivers, which is defined as a parent, guardian, or other person designated by a certifying practitioner as taking responsibility for managing the wellbeing of a qualified student. Prior to a school's possession, storage, or administration of medical cannabis, primary caregivers would be required to demonstrate evidence to the school that the student is authorized as a qualified patient pursuant to the Lynn and Erin Compassionate Use Act; provide a written certification; provide a written treatment plan; and submit a written release of liability, which releases school districts, schools, local school boards, charter schools, and governing bodies of charter schools from civil liability for acting in accordance with the provisions of Laws 2019, Chapter 261, the Lynn and Erin Compassionate Use Act, the proposed rule, and applicable rules from the Department of Health. The release of liability would extend to any liability and reimbursement claims for costs associated with accidental spillage or waste of medical cannabis. Primary caregivers would need to submit a signed Health Insurance Portability and Accountability Act (HIPAA) authorization to the school to be retained as a medical record. Notably, the proposed rule omits the statutory requirement that the written treatment plan must be agreed to and signed by the principal of the qualified student's school or the principal's designee, in addition to the qualified student's parent or legal guardian.

The proposed rule would require primary caregivers to deliver the medical cannabis in a container labeled with the student's name and date of birth and the dosage allotment. Primary caregivers would be required to pick up from the designated school personnel any unused medical cannabis at the end of the school year or upon disenrollment, withdrawal, transfer, or graduation of the qualified student, whichever occurs first.

Exemption from Rule and Appeal Procedures. The proposed rule would allow a school district or charter school to seek an exemption from implementing the provisions of this rule if it receives written communication from the federal government that implementation would result in federal education funding being withheld or withdrawn. A primary caregiver may appeal the school district's or charter school's exemption by submitting a signed letter to the secretary containing a statement of the facts on which the appeal is based, detailing the basis of the appeal.

Technical Issues

In Section B of 6.12.10.11 NMAC, the rule states "the secretary shall provide a written response with a final decision within **thirty** 30 days of receipt of the appeal or within 30 days of receipt of the additional documentation requested, whichever is later." PED should remove "thirty" from the sentence.

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 12 PUBLIC SCHOOL ADMINISTRATION - HEALTH AND SAFETY
PART 10 MEDICAL CANNABIS IN SCHOOLS

6.12.10.1 ISSUING AGENCY: Public Education Department, herein after the department.
[6.12.10.1 NMAC – N, 8/27/2019]

6.12.10.2 SCOPE: This rule applies to school districts, local school boards, state-chartered charter schools and governing bodies.
[6.12.10.2 NMAC – N, 8/27/2019]

6.12.10.3 STATUTORY AUTHORITY: This rule is promulgated by the secretary of education and the public education department under the authority of Sections 9-24-8, 22-2-1 and 22-2-2 NMSA 1978.
[6.12.10.3 NMAC – N, 8/27/2019]

6.12.10.4 DURATION: Permanent.
[6.12.10.4 NMAC – N, 8/27/2019]

6.12.10.5 EFFECTIVE DATE: August 27, 2019, unless a later date is cited at the end of a section.
[6.12.10.5 NMAC –N, 8/27/2019]

6.12.10.6 OBJECTIVE: The objective of this rule is to provide parameters for the possession, storage, and administration of medical cannabis to qualified students for use in school settings.
[6.12.10.6 NMAC –N, 8/27/2019]

6.12.10.7 DEFINITIONS:

A. “Cannabis” means all parts of the plant cannabis, including any and varieties, species and subspecies of the genus cannabis, and excludes the plant cannabis sativa L. and any party of the plant, whether growing or not, containing a delta-9-tetrahydrocannabinol concentration of no more than three-tenths percent on a dry weight basis.

B. “Cannabis producer” means a person or entity licensed by the Department of health to possess, produce, dispense, distribute, and manufacture cannabis and cannabis products and sell wholesale or by direct sale to qualified patients and primary caregivers.

C. “Certifying practitioner” means a health care practitioner who is licensed in New Mexico to diagnose a qualified patient and recommend medical cannabis as a course of treatment.

D. “Designated school personnel” means a school employee whom a public school, charter school, or school district authorizes to possess, store and administer medical cannabis to a qualified student in accordance with the provisions of Chapter 261, Laws of 2019, this rule, the Lynn and Erin Compassionate Use Act, and New Mexico department of health rules regarding the Lynn and Erin Compassionate Use Act.

E. “Hemp” means the plant cannabis sativa L. and any part of the plant, whether growing, or not, containing a delta-9-tetrahydrocannabinol concentration of no more than three-tenths percent on a dry weight basis, and is exempt from the New Mexico Controlled Substances Act.

F. “License” means written authorization to licensees issued by the New Mexico department of health to implement the provisions of Chapter 261, Laws of 2019, this rule, the Lynn and Erin Compassionate Use Act, and New Mexico department of health rules regarding the Lynn and Erin Compassionate Use Act.

G. “Licensee” means a person or entity issued a license issued by the New Mexico department of health pursuant to the Lynn and Erin Compassionate Use Act and includes school districts, local school boards, locally-chartered charter schools, state-chartered charter schools and governing bodies of state-chartered charter schools.

H. “Licensee representative” means designated school personnel who work for a licensee and possess, store, or administer medical cannabis to a qualified student in a school setting.

I. “Medical Cannabis” means cannabis:

(1) recommended for treatment of a debilitating medical condition as defined in the Lynn and Erin Compassionate Use Act, in a written certification by a certified practitioner;

(2) dispensed by a cannabis producer that has received approval from the New Mexico department of health to conduct sales of medical cannabis;

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(3) is in the form of a capsule, extract, or concentrate to be ingested through the mouth that:
(a) may be safely divided into measurable doses;
(b) is not an aerosol product consumable through smoking or in particulate form as a vapor or by burning;

- (c) is not a food or beverage product;
(d) is not a salve, balm or other topical product;
(e) does not require refrigerated storage; and
(4) is provided to a school in package or container clearly labeled with:
(a) the student's name and date of birth; and
(b) the dosage allotment.

J. "Primary caregiver" means a parent, guardian or other person designated by a certifying practitioner as taking responsibility for managing the well-being of a qualified student authorized as a qualified patient with respect to the medical use of cannabis pursuant to the provisions of the Lynn and Erin Compassionate Use Act.

K. "Qualified patient" means a person who has:
(1) been diagnosed by a certifying practitioner;
(2) received written certification from a certifying practitioner; and
(3) is currently enrolled in the New Mexico department of health's medical cannabis program and has received a current and valid registry identification card pursuant to the Lynn and Erin Compassionate Use Act.

L. "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 to carry and use medical cannabis.

M. "Self-administering" means the ingestion of medical cannabis by a qualified student without the presence of a primary caregiver or designated school personnel in a school setting.

N. "School" means a public school, including a charter school.

O. "School setting" means any of the following locations during a school day:
(1) a school building;
(2) a school bus used within the state during, in transit to, or in transit from a school-sponsored activity;
(3) a public vehicle used within the state during, in transit to, or in transit from a school-sponsored activity in the state; or
(4) a public site in the state where a school-sponsored activity takes place.

P. "Written certification" means a statement written by a qualified student's certifying practitioner:
(1) in a qualified student's medical records or in the written treatment plan statement;
(2) certifying that the qualified student has a debilitating medical condition pursuant to the Lynn and Erin Compassionate Use Act;
(3) certifying that the certifying practitioner believes that the potential health benefits of the medical use of cannabis would likely outweigh the health risks for the qualified student; and
(4) signed by the certifying practitioner.

Q. "Written treatment plan" means a document developed by the primary caregiver in collaboration with the certifying practitioner that:
(1) describes the qualified student's, and the certifying practitioner's diagnosis of a debilitating medical condition per the Lynn and Erin Compassionate Use Act;
(2) describes the plan for recommended treatment with medical cannabis, including:
(a) the recommended dosage allotment;
(b) the recommended frequency of administration of medical cannabis in a school setting; and

(c) is signed by the primary caregiver and the certifying practitioner.

[6.12.10.7 NMAC – N, 8/27/2019]

6.12.10.8 POSSESSION, STORAGE AND ADMINISTRATION:

A. Policies and Procedures. Each local school board or governing body shall establish policies and procedures for the possession, storage, and administration of medical cannabis as follows:

- (1) school district and charter school policies and procedures shall:

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- (a) prohibit students from possessing, storing, or self-administering medical cannabis in a school setting;
 - (b) require the primary caregiver to deliver the medical cannabis in a container clearly labeled with:
 - (i) the student's name and date of birth; and
 - (ii) the dosage allotment;
 - (2) prohibit qualified students from storing the medical cannabis in the school setting;
 - (3) require the provision of a secure location with a locked storage container that is accessible only by designated school personnel;
 - (4) require the immediate return of medical cannabis used in a school setting outside of school premises to a locked storage container;
 - (5) require the designated school personnel responsible for storage of the qualified student's medical cannabis to return any unused medical cannabis to the primary caregiver at the end of each school year or upon disenrollment, withdrawal, transfer, or graduation of the qualified student, whichever occurs first;
 - (6) address the administration of medical cannabis in school settings during the school day by:
 - (a) primary caregivers; and
 - (b) designated school personnel;
 - (7) prohibit:
 - (a) a primary caregiver from administering medical cannabis in a manner that creates disruption to the education environment or causes other students to be exposed to medical cannabis;
 - (b) disciplining a school employee who refuses to administer medical cannabis; and
 - (8) require witnessed clean-up and witnessed destruction of medical cannabis in the event of spillage and waste and notification to the primary caregiver within the same day in which spillage or waste occurs.
- B. Designated school personnel.** Each local school board or governing body shall identify the school personnel who will serve as designated school personnel and will perform any or all of the following functions to implement the Lynn and Erin Compassionate Use Act:
- (1) possess medical cannabis on behalf of a qualified student;
 - (2) store medical cannabis on behalf of a qualified student; and
 - (3) administer medical cannabis to a qualified student.

C. Training. Each local school board or governing body shall provide training to designated school personnel on the possession, storage, and administration of medical cannabis to a qualified student in accordance with the provisions of this rule.

[6.12.10.8 NMAC –N, 8/27/2019]

6.12.10.9 MEDICAL CANNABIS RESTRICTIONS:

- A.** Each school shall ban a student's possession, use, distribution, sale, or being under the influence of a cannabis product in a manner inconsistent with provisions of the Lynn and Erin Compassionate Use Act.
- B.** No school shall discipline a student who is a qualified student on the basis that the student requires medical cannabis as necessary for the student to attend school.
- C.** No school shall deny eligibility to attend school to a qualified student on the basis that the qualified student requires medical cannabis as a reasonable accommodation necessary for the student to attend school or an in-state school-sponsored activity.

[6.12.10.9 NMAC –N, 8/27/2019]

6.12.10.10 MEDICAL CANNABIS – PRIMARY CAREGIVER RESPONSIBILITIES:

- A.** School districts and charter schools shall adopt policies and procedures that establish primary caregivers' responsibilities under this rule.
- B.** Prior to any school's possession, storage, and administration of medical cannabis on behalf of a qualified student, the primary caregiver is required to:
 - (1) demonstrate evidence to the school that the student is authorized as a qualified patient pursuant to the Lynn and Erin Compassionate Use Act;
 - (2) provide a written certification;
 - (3) provide a written treatment plan;
 - (4) submit a written release of liability that:

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(a) 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:

(i) school districts, school district personnel and volunteers, schools, school personnel and volunteers, local school boards, and local school board members;

(ii) charter schools, charter school personnel and volunteers, governing bodies of charter schools, and governing body members;

(b) releases the persons and entities listed in Subparagraph (a) of Paragraph (4) of Section B of 6.12.10.10 NMAC, above, from any liability and reimbursement claims for costs associated with accidental spillage or waste of medical cannabis;

(c) 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;

(5) submit a written treatment plan, using the written treatment plan form posted on the department's website;

(6) require the qualified student's primary caregiver to submit to the school a signed Health Insurance Portability and Accountability Act (HIPAA) authorization, using the HIPAA authorization form posted on the New Mexico department of health's website, that permits the school to obtain current information from the department of health regarding the enrollment status of the qualified student in the department of health's medical cannabis program. The HIPAA authorization form shall be retained as a medical record;

(7) 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;

(8) 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, whichever occurs first; and

(9) 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.

[6.12.10.10 NMAC – N, 8/27/2019]

6.12.10.11 EXEMPTION FROM RULE; APPEAL PROCEDURES:

A. A school district or charter school may seek an exemption from implementing the provisions of this rule if it receives written communication from the federal government that implementation would result in federal education funding being withheld or withdrawn. The school district or charter school shall deliver electronically such written communication from the federal government to the Secretary, who shall review the written communication for compliance with this paragraph. After the Secretary confirms compliance with this paragraph, the school district or charter school shall post on its website the written communication from the federal government and notice of the exemption from implementing the provisions of this rule.

B. A primary caregiver may appeal the school district's or charter school's exemption by submitting a signed letter to the secretary containing a statement of the facts on which the appeal is based, detailing the basis of the appeal. The secretary or secretary's designee may require additional documentation to be provided by the primary caregiver, school district or charter school before responding to the appeal. Such additional documentation, if requested, shall be due within 10 days of the request. The secretary shall provide a written response with a final decision within thirty 30 days of receipt of the appeal or within 30 days of receipt of the additional documentation requested, whichever is later. The secretary, at the secretary's discretion, may require a hearing, to be conducted within 60 days of receipt of the appeal, and to include a representative of the school district or charter school, before the secretary or secretary's designee. The secretary shall issue a final decision within 30 days of the hearing.

[6.12.10.11 NMAC –N, 6.12.10.14 NMAC, 8/27/2019]

6.12.10.12 EXEMPTION FROM STATE CRIMINAL AND CIVIL PENALTIES: In accordance with this rule and New Mexico department of health rules:

A. Designated school personnel shall be exempt from civil liability and are authorized within their scope of employment, and their licensure if applicable, to possess, store, and administer cannabis to qualified students in school settings for purposes of implementing the provisions of Chapter 261, Laws of, this rule, the Lynn

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and Erin Compassionate Use Act, and New Mexico department of health rules regarding the Lynn and Erin Compassionate Use Act.

B. Designated school personnel shall be exempt from criminal liability, as the department of health deems public schools to be licensees, and deems designated school personnel to be licensee representatives, authorized within their scope of employment, and their licensure if applicable, to possess and store medical cannabis on behalf of qualified students, and to administer medical cannabis to qualified students in school settings, in accordance with Chapter 261, Laws of 2019, this rule, the Lynn and Erin Compassionate Use Act, and New Mexico department of health rules regarding the Lynn and Erin Compassionate Use Act. The department of health deems the public schools and designated school personnel to be entitled to immunity from arrest, prosecution or penalty, in any manner, for activities conducted within their scope of employment and their licensure, if applicable, and in accordance with the Public School Code.

[6.12.10.12 NMAC – N, 8/27/2019]

6.12.10.13 HEMP EXEMPTED: School districts and charter schools are encouraged to have policies and procedures relating to hemp, which is not subject to the same civil or criminal laws as cannabis or medical cannabis. [6.12.10.13 NMAC – N, 8/27/2019]

HISTORY OF 6.12.10 NMAC: [RESERVED]