F I S C A L I M P A C T R E P O R T

SPONSOR	Gould/Armstrong, G/ Candaleria	**ORIGINAL DATE** **LAST UPDATED**	1/25/19 3/11/19	**HB**	
SHORT TITLE	Medical Marijuana in Schools			**SB**	204/aSPAC/aSJC/aSFl# 1/aHHHC/aHEC
				ANALYST	Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications		

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB256, HB317, HB356, SB61 and SB23.

SOURCES OF INFORMATION
LFC Files

Responses Received From
Public Education Department (PED)
Human Services Department (HSD)
Department of Health (DOH)

SUMMARY

Synopsis of HEC Amendment

The House Education Committee Amendment removes two instances of the word "solely", which appear superfluous in denying the ability of public or charter schools to discipline a student or deny a student admission to the school on the basis of use of medical marijuana.

Synopsis of HHHC Amendment

The House Health and Human Services Committee Amendment to Senate Bill 204 removes an extraneous word "is" from the definition of "medical cannabis," but does not change the meaning of the definition or the bill.

Synopsis of SFl Amendment #1

The Senate Floor amendment changes he wording near the beginning of the body of the bill from "local school boards and the governing bodies of charter schools shall authorize by rule the possession, storage and administration of medical cannabis" to local school boards and the governing bodies of charter schools shall authorize adopt policies and procedures to the

possession, storage and administration of medical cannabis." The sentence resulting is not clear.

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment makes three changes to the bill:

1) It removes the redundant words "public school" in two places where it is used in parallel with school district and charter school, inasmuch as all public schools would be part of school districts,
2) It allows a school district or charter school to "determine," rather than "demonstrate" that it would lose federal funding by complying with the act, and
3) It removes a paragraph requiring a school district to make known on its website a policy of not complying with the act and substitutes a provision that parents will have access to an appeal process established by PED.

Synopsis of SPAC Amendment

The SPAC amendment adds to the bill a provision that no school may discipline an employee who did not wish to administer medical cannabis to a student.

Synopsis of Original Bill

Senate Bill 204 adds a section to both the Public School Code (Section 22 NMSA 1978) and to the Lynn and Erin Compassionate Use Act (Section 26-2B NMSA 1978) to allow children eligible to use medical marijuana to do so in schools under specified circumstances.
School boards and charter school governing bodies are required to set up rules for the use of medical marijuana, either administered by parents or by school personnel, the school personnel involved to be determined by the school. The regulations would meet the following criteria:

- The school, not the student, would store the drug,
- Administration of the drug would not disrupt other students' educational environment,
- A parent or guardian and the school principal or her/his designee sign a written treatment plan, and
- The school obtains and maintains a copy of the student's certification for medical marijuana and a statement from the parent absolving the school from liability for proper use of the medication.

Public schools, school districts, and charter schools could be exempted from giving medical marijuana to children if they demonstrated that its use would jeopardize federal funding, and specified as much "in a conspicuous manner" on their websites.

Schools would not be permitted to discipline students for using medical marijuana or denying the child attendance at the school for requiring it.

Medical cannabis to be used in a school would exclude the use of inhaled or smoked products.

The Lynn and Erin Compassionate Use Act is amended to remove school buses, public vehicles, and school grounds as places where marijuana cannot be used.

FISCAL IMPLICATIONS

Although PED notes that new rules for districts and charter schools would have to be drafted, PED also states that there would be no fiscal impact of the bill. PED states that

> SB204 would require New Mexico Public Education Department (PED) staff to dedicate time to the promulgation of rules. District and charter schools would be required to develop new rules, policies or procedures that allow for the possession, storage and administration of medical cannabis at school. Districts and charter schools may have to purchase storage devices or facilities (e.g., locked cabinets, etc.) to support implementation of SB204. These new rules, policies or procedures may also warrant a legal consultation for the Local Education Agency (LEA) to ensure compliance with state and federal laws.

HSD notes that Medicaid is not permitted by federal law to pay for medical marijuana.

DOH notes that

> SB204 does not address the possession or usage of cannabis or cannabis products by persons other than students. For example, if an employee of a school wished to possess or consume cannabis on school property, they would no longer be prohibited from doing so, given the bill's proposed revisions to the Lynn and Erin Compassionate Use Act. The bill does not address the ability of schools, school districts, and charter schools to adopt rules limiting or otherwise regulating the possession and usage of medical cannabis by persons other than students, such as employees, visitors, and others.
>
> Subsection C in the bill's proposed amendments to the Public School Code would allow a public school, charter school, or school district to opt out of allowing cannabis to be administered to students on school premises, if the school, charter school, or school district "reasonably demonstrates" that it would lose or has lost federal funding as a result of allowing cannabis on school grounds. However, subsection D would prohibit those same entities from disciplining a student solely on the basis that the student requires medical cannabis as a reasonable accommodation, or denying eligibility for a student to attend the school solely on the basis that the student requires medical cannabis as a reasonable accommodation. Thus, SB204 seems to be establishing two somewhat contradictory standards: a school can opt out of allowing cannabis on school premises, but it cannot prohibit a student from attending the school on the basis that the student requires medical cannabis as a reasonable accommodation to attend the school. It appears that the "reasonable accommodation" text is intended to create an exception to the opt-out provision of subsection C, meaning that a school would be required to allow a student to use medical cannabis on school premises, regardless of the school's rules, if the student could demonstrate that use of cannabis was a reasonable accommodation necessary for the student's participation at the school.

SIGNIFICANT ISSUES

Current qualifying conditions for use of medical marijuana include the following (from the Department of Health website, https://nmhealth.org/about/mcp/svcs/hpp/):

1. Cancer
2. Glaucoma
3. Multiple Sclerosis
4. Epilepsy/Seizure Disorder
5. Spinal Cord Damage with Intractable Spasticity
6. HIV/AIDS

7. Painful peripheral neuropathy
8. Intractable nausea/vomiting
9. Severe anorexia/cachexia
10. Hepatitis C infection currently receiving antiviral treatment
11. Crohn's disease
12. Post-Traumatic Stress Disorder
13. Amyotrophic Lateral Sclerosis
14. Severe Chronic Pain
15. Hospice Care
16. Inflammatory autoimmune-mediated arthritis
17. Cervical dystonia
18. Parkinson's disease
19. Huntington's disease
20. Ulcerative colitis
21. Inclusion Body Myositis

PED's analysis of significant issues regarding Senate Bill 204 includes the following:

> The Lynn and Erin Compassionate Use Act allows for the medical use of cannabis in New Mexico. Currently, this act does not allow for the administration of medical cannabis on school property. Individuals certified to use medical cannabis are not relieved from the possibility of "criminal prosecution or civil penalty for possession or use of cannabis in a school bus or public vehicle" or "on school grounds or property." SB204 would amend the Lynn and Erin Compassionate Use Act to remove the language cited above. Furthermore, SB204 would enact a new section of the Public School Code which would allow the possession, storage and administration of medical cannabis on school property. The changes proposed in SB204 would allow students who are certified to use medical cannabis the opportunity to remain on campus while receiving their medical cannabis treatment, reducing out-of-classroom time. SB204 states that local school boards and governing bodies of charter schools shall authorize parents and legal guardians or designated school personnel to possess, store and administer the medical cannabis. The definition of designated school personnel, in SB204, does not include eligibility criteria.
> Sources: https://nmhealth.org/publication/view/regulation/128/
>
> SB204 does acknowledge that the use of medical cannabis shall not be administered "in a manner that creates disruption to the educational environment or causes other students to be exposed to medical cannabis." This statement in SB204 provides protection to the other students who are not prescribed medical cannabis. Although medical cannabis can help certain individuals with specified health conditions, the Centers for Disease Control and Prevention (CDC) states "there are health risks associated with using marijuana regardless of how it is used." Caution should be exercised and exposure to the substances in medical cannabis limited. SB204 states that the medical cannabis administered on school settings shall not be in an aerosol form nor can it be smoked. This would assist in limiting the exposure to the individuals to whom medical cannabis has been prescribed.
> Source: https://www.cdc.gov/marijuana/faqs/is-marijuana-medicine.html
>
> The American Academy of Pediatrics openly "oppose[d in 2015] medical marijuana outside of the usual process by the Food and Drug Administration (FDA) to approve

pharmaceutical products." This is in an effort to limit the risks associated with the use of medical cannabis. However, the research process the FDA approval entails is often lengthy and the AAP does acknowledge that "some exceptions should be made for compassionate use in children with debilitating or life-limiting diseases." The AAP does not specify specific health conditions in their statement.
Source: https://www.aap.org/en-us/about-the-aap/aap-press-room/pages/American-Academy-of-Pediatrics-Reaffirms-Opposition-to-Legalizing-Marijuana-for-Recreational-or-Medical-Use.aspx. [A more nuanced recent statement is attached to this FIR.]

SB204 does provide for certain exceptions that would allow a public school, charter school or district to refuse implementation of the provisions stated in SB204. First, the public school, charter school, or district would need to reasonably demonstrate that they would lose or have lost federal funding as a result of possessing, storing or administering medical cannabis on campus. Second, the public school, charter school or district must post its decision not to comply with the provisions of SB204 in a conspicuous location on their website. It is unclear who would review the districts statement and determine "reasonable" demonstration to allow this exception.

It is important to note that "long-term cannabis use can have permanent effects on the developing brains of adolescents and young adults" (CDC, 2018). The PED, school districts, and charter schools would need to approach the use of medical cannabis by youth cautiously, ensuring that clear and strong rules, policies and procedures are developed and implemented. However, there are many students who may benefit from the use of medical cannabis. Medical cannabis may manage a student's symptoms so he or she can participate in the regular school day. Source:
https://www.cdc.gov/marijuana/nas/adolescents.html

SB 204 provides that for those schools authorizing the possession, storage, and administration of medical cannabis, to qualified students, that those entities do so with certain conditions, including that a written treatment plan for the administration of the medical cannabis is agreed to and signed off by the principal or the principal's designee of the qualified student's school and the qualified student's parent or legal guardian. The provision may further clarify within the provisions what is intended as written treatment plan or provide a definition…

There may be instances when the parent may qualify under a prescription permitted by federal law which may be more expensive than other alternative, and the parent may choose those other alternatives. This provision may clarify further whether that is an intended consequence.
SB 204 provides that the term "school" means a public school or a charter school. There may be cases when students are transferred by a public school to a private school and the public school continues to provide services. The provisions may clarify further whether are any instances to which the requirements in the provisions are intended to apply to private schools.

RELATIONSHIP with HB 256, "Add E-Cigarettes to Clean Indoor Air Act," HB 317, "Drugged Driving Penalties", HB 356, "Cannabis Regulation Act," SB 61 "No Indoor E-Cigarette Use," and SB 323, "Decrease Marijuana Penalties."

OTHER SUBSTANTIVE ISSUES

As noted by PED, "As cannabis usage (including medical cannabis usage) remains illegal under federal law, federal funding to those districts and charter schools that implement the provision of SB204 requiring storage and administration of medical cannabis by parents and legal guardians, or by designated school personnel to qualified students may be affected."

ALTERNATIVES

DOH proposes the following alternatives/amendments:

- Provide immunity from criminal prosecution and civil penalties for school personnel who possess medical cannabis on behalf of a qualified patient student, or who administer medical cannabis to a qualified patient student;

- Specify in the bill the authority that public schools, school districts, and charter schools have to create rules limiting or otherwise regulating the possession and use of medical cannabis by persons other than students;

- Substitute the existing definition of "written certification" in SB204 with a cross-reference to the definition of "written certification" that is contained in the Lynn and Erin Compassionate Use Act at NMSA 1978, § 26-2B-3;
- Revise the proposed amendment to NMSA 1978, § 26-2B-5(A)(3)(a) that is contained in SB204, to remove only the reference to a school bus, amending the existing provision to instead state, "in a public vehicle other than a school bus"; and

- Revise the definition of "medical cannabis" that is contained in SB204 to exempt hemp and hemp-derived products.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

A parent with a child using medical marijuana would continue to be required to take the child off school grounds to provide him/her with the prescribed medication.

LAC/gb/sb

AAP Journals & Periodicals

Hematology/Oncology

Perspectives on the Use of Medicinal Marijuana in Children

by Catherine Spaulding MD, SOPT Monthly Feature Editor, Pediatrics

A recent study published in this month's *Pediatrics* by Ananth et al. provides novel insights on provider beliefs, knowledge and attitudes regarding the use of medical marijuana (MM) in children with cancer (10.1542/peds.2017-0559). Their study is extremely timely: though accessibility and public interest in MM has grown significantly in the past decade, MM use has not been accepted within the mainstream pediatric community. Until now, no study has explained why this may be the case.

The decision to use MM is understandably a difficult one, though a growing body of literature suggests numerous potential benefits (Grant et al *Open Neurol J.*2012,Lueng *JABFM* 2011). Cannabinoids (the non-psychoactive chemical ingredient in cannabis) have been shown to combat nausea, anorexia and neuropathic pain in adults (Abrams et al *Current Oncol.* 2016, Ellis et al *Neuropsychopharm.* 2008). Though no formal studies have been conducted in children, dronabinol - a synthetic cannabinoid - is frequently used in pediatric oncology and is an effective treatment for chemotherapy induced nausea and vomiting (Elder et al *J Pediatr Pharmacol Ther* 2015). Recently, MM has been shown to significantly decrease seizures in children with Dravet Syndrome (Devinisky *NEJM* 2017). New evidence also suggests that marijuana itself might be a viable treatment for pediatric blood cancers by inducing apoptosis in leukemic cells and decreasing tumor burden (Poweles *Blood* 2004, McKallip *Molec Pharm.* 2006). Thus, it is hardly surprising that childhood cancer patients and their families frequently inquire about MM (Ananth et al *Pediatrics* 2017). Perhaps for these reasons, the vast majority of pediatric providers surveyed in the study by Ananth et al, indicated that they would help pediatric oncology patients obtain access to MM and favor further research on the topic.

However, MM is not without its consequences. Short term effects of marijuana include decreased concentration, impaired motor control, delayed reaction time and altered judgement -- all of which are inherently problematic in childhood and adolescence (Schweinsburg et al *Psychiatry Res*. 2008). Many questions still exist surrounding the long term effects of marijuana on the developing prefrontal cortex, but evidence suggests that there are higher rates of psychosis in young patients predisposed to develop schizophrenia who smoke marijuana (Moore et al *Lancet* 2007).

For these reasons, the American Academy of Pediatrics (AAP) currently opposes the use of marijuana in patients up to 21 years of age. Yet, the AAP also strongly supports research on cannabinoids and acknowledges that MM may be an option for "children with life-limiting or severely debilitating conditions and for whom current therapies are inadequate" (Ammerman et al *Pediatrics* 2015).

There are currently 29 states in which MM is legal. The likelihood that children with chronic illness and their families will seek out MM increases as legal barriers continue to fall. We need to be ready to meet our patients' questions with answers. Anath et al's findings shows us that though we may be open minded to the possibility of childhood use of MM, it is time to focus our research on the barriers that currently limit our use of this potential therapy.

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- Understanding the Highs and Lows of Adolescent Marijuana Use
- Counseling Parents and Teens About Marijuana Use in the Era of Legalization of Marijuana
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