



December 22, 2020

The Honorable Bill Ferguson
President of the Senate
H-107 State House
Annapolis, MD 21401-1991

The Honorable Adrienne A. Jones
Speaker of the House
H-101 State House
Annapolis, MD 21401-1991

RE: House Bill 617/Senate Bill 604, Chapters 624/625 of the Acts of 2020 – Public and Nonpublic Schools – Medical Cannabis – Policy for Administration During School Hours and Events

Dear President Ferguson and Speaker Jones:

Pursuant to SECTION 2 of Chapters 624/625 of the Acts of 2020, the Maryland Medical Cannabis Commission (“MMCC”) and the Maryland Board of Nursing (“MBON”) respectfully submit this legislative report on whether it is necessary to amend Title 8 of the Health Occupations Article or any other State law to allow school nurses or other authorized designated school personnel to administer medical cannabis to a student who is a qualifying patient under this Act. This report provides background on the development of the school health guidelines for the administration of medical cannabis in the school setting. Further, the report makes recommendations on specific changes to State statute and regulations that may be necessary to clarify the authority of school nurses and other designated school personnel to administer medical cannabis to a student who is a qualifying patient.

The MMCC and MBON appreciate your support for the administration of medical cannabis to qualifying students in the school setting. We are pleased that students who are being treated with medical cannabis will be able to attend school and participate in school activities while continuing their treatment, which cannot reasonably be accomplished outside of school hours. If you have questions about this report, please contact Ms. Taylor Kasky, JD, Director, MMCC Office of Policy and Government Affairs at (443) 915-5297 or taylors.kasky@maryland.gov.

Sincerely,

William C. Tilburg, JD, MPH
Executive Director
Maryland Medical Cannabis Commission

Karen E. B. Evans, MSN, RN
Executive Director
Maryland Board of Nursing

cc: Brian Lopez, Chair, Maryland Medical Cannabis Commission
Gary N. Hicks, RN, President, Maryland Board of Nursing
Webster Ye, JD, Deputy Chief of Staff, MDH Office of the Secretary
Sarah Albert, Department of Legislative Services, MSAR #



LEGISLATIVE REPORT

MEDICAL CANNABIS IN SCHOOLS

Proposed Statutory and Regulatory Changes

December 2020

Maryland Medical Cannabis Commission
William Tilburg, JD, MPH, Executive Director
Brian Lopez, Chair

Maryland Board of Nursing
Karen Evans, MSN, RN-BC, Executive Director
Gary N. Hicks, RN, President

Background

House Bill 617/Senate Bill 604, Chapters 624/625 of the Acts of 2020 requires the Maryland State Department of Education (MSDE) and the Maryland Medical Cannabis Commission (MMCC) to jointly develop guidelines for public schools allowing the administration of medical cannabis during school hours, at school-sponsored activities and while on a school bus to students who are qualifying patients by December 31, 2020. By that same date, the MMCC and the Maryland Board of Nursing (MBON) must:

- (1) Consider whether it is necessary to amend Title 8 of the Health Occupations Article or any other State law to allow school nurses or other authorized designated school personnel to administer medical cannabis to a student who is a qualifying patient; and
- (2) Make recommendations to the General Assembly, in accordance with §2-1257 of the State Government Article, or any other State law to allow school nurses or other authorized designated school personnel to administer medical cannabis to a student who is a qualifying patient.

This legislative report addresses the State statutory and regulatory changes recommended by MMCC and MBON to clarify a conflict in the law concerning the authority of designated school personnel, including school nurses, to administer medical cannabis in accordance with the school health guidelines for the administration of medical cannabis in a school setting.

See the links below for House Bill 617/Senate Bill 604, Chapters 624/625 of the Acts of 2020:
http://mgaleg.maryland.gov/2020RS/chapters_noln/Ch_624_hb0617T.pdf
http://mgaleg.maryland.gov/2020RS/chapters_noln/Ch_625_sb0604T.pdf

Development of the Guidelines

The MSDE and MMCC jointly convened a Medical Cannabis in Schools Guidelines Subcommittee (“the Subcommittee”) to develop the guidelines for the administration of medical cannabis in schools. The Subcommittee was comprised of individuals with expertise primarily in school health, nursing, education, and policy. The Subcommittee membership included MMCC staff; MSDE student services staff; local school health services coordinators/staff; MBON representatives; Maryland Department of Health representatives; a Kennedy Krieger Institute representative; and advocacy group members. (See Attachment A – Medical Cannabis in Schools Guidelines Subcommittee Membership) The Subcommittee convened eight meetings – on June 19, July 8, July 23, August 6, August 20, September 2, September 16, and September 30, respectively.

One of the key decisions that the Subcommittee made in the development of the guidelines was to determine precisely which school personnel would be authorized to administer the medical cannabis. The Subcommittee determined that the authorized school personnel would consist of the school administrator, or any school staff or contracted school personnel of the local school system designated by the school administrator who completes the mandatory training requirements for the administration of medical cannabis under the guidelines. In other words, any trained, designated

school personnel – whether it be the school administrator, a teacher, the school nurse, a certified nursing assistant (CNA), or a certified medication technician (CMT), etc. – would be authorized to administer the medical cannabis under the guidelines. This designation approach, instead of operating within the typical nursing delegation authority, is supported not only by the Subcommittee but also by the MBON. Early on in the Subcommittee’s deliberations, the MBON recommended the designation model along with mandatory training as the best approach for medical cannabis administration in the school setting.

The designated school personnel are required to administer the medical cannabis under the direction of the student’s medical cannabis provider who must complete a form for the school personnel to follow concerning the dosing, timing, and route of administration of the medical cannabis. The student’s medical cannabis provider would also be available to the designated school personnel to answer any clinical questions that may arise about the administration of the medical cannabis to a student under their care. The student’s medical cannabis provider may further act in consultation with a licensed dispensary clinical director who is a health care provider with special training in the risks and benefits of medical cannabis and latest scientific research on medical cannabis.

The designated school personnel would be acting in a very similar capacity to a parent or legal guardian who administers the medical cannabis in the home setting. The administration of medical cannabis to a child is generally a relatively simple, straightforward process. The medical cannabis is often administered to a child in the form of a tincture which requires a drop of oil to be placed under the child’s tongue. Other states that permit school personnel to administer medical cannabis on school grounds also use the designation model for the school personnel who administer the medical cannabis to students. In other words, similar to Maryland, school personnel in other states who administer medical cannabis do not operate under nursing delegation authority. (CO, FL, IL, ME, NJ, NM, and VA)

Legal Review Process

After the Subcommittee defined the “designated school personnel” who would be authorized to administer the medical cannabis to qualifying students, the MMCC and MBON considered whether it was necessary to amend any State laws to allow school nurses or other authorized designated school personnel to administer medical cannabis to a student who is a qualifying patient. MMCC/MBON focused its legal review on the Maryland Nurse Practice Act under Title 8 of the Health Occupations Article and the Code of Maryland Regulations (COMAR) Title 10, Subtitle 27, which operates under the authority of the nurse practice act.

As previously mentioned, the Subcommittee designed the medical cannabis in schools guidelines to operate completely outside of the nursing delegation authority. If school personnel are designated by the school administrator and trained to administer the medical cannabis, they will not administer the medical cannabis under the instruction, supervision, or evaluation of the school nurse. However, that is in direct conflict with a number of existing State laws which provide that the administration of medication is a nursing function and the nurse retains full responsibility for medication administration. Health Occupations Article, Title 8 and COMAR 10.27 allow certain nursing functions to be delegated. COMAR 10.27.11.02B(6) defines delegation as “the act of authorizing an unlicensed individual, a CNA, or a CMT to perform acts of registered nursing or

licensed practical nursing.” The regulatory chapter under COMAR 10.27.11 further provides that the nurse may delegate the responsibility to perform a nursing task to an unlicensed individual (e.g. teacher, coach, other school staff), a CNA, or a CMT. The delegating nurse retains the accountability for the nursing task. Whether a student’s health care needs may be met by delegation to other school health services staff (e.g., CNA, CMT) or by training an unlicensed individual who is a school staff member is made using the criteria for delegation outlined in the Maryland Nurse Practice Act, all applicable regulations, and the registered nurse's professional judgment.

Specifically, the medical cannabis in schools guidelines conflict with the following existing statutes and regulations which require medication to be administered by a nurse or under the nurse’s delegation authority:

COMAR 10.27.11.03A and .03E Criteria for Delegation.

.03A. The nurse may delegate the responsibility to perform a nursing task to an unlicensed individual, a CNA, or a CMT. The delegating nurse retains the accountability for the nursing task.

.03E. The nurse shall be the primary decision maker when delegating a nursing task to an unlicensed individual, CNA, or CMT.

Issue: Under the guidelines, the school nurse does not delegate the administration of the medical cannabis, is not the primary decision maker, and does not have accountability with respect to the medical cannabis administration. Instead, the student’s certifying medical cannabis provider oversees the student’s clinical care and would be available to the designated school personnel to provide guidance concerning the administration of medical cannabis to the student.

COMAR 10.27.11.05E(1) and .05F Nursing Functions.

.05E(1) The nurse may delegate the responsibility to perform a nursing task to an unlicensed individual if acceptance of the delegated nursing task does not become a routine part of the unlicensed individual’s job duties.

Issue. Contrary to this regulation, the guidelines authorize an unlicensed individual to administer medical cannabis outside the delegation by a nurse and permit the administration to become a routine part of the unlicensed individual’s job duties.

.05F. Administration of medication is a nursing function. As such, the nurse retains full responsibility for medication administration.

Issue. The guidelines represent an exception to the general rule that the administration of medication is a nursing function. Further, the nurse does not have full responsibility for the medication administration. Even if the school administrator proposes to designate the school nurse to administer a student’s medical cannabis, the school nurse has the right to refuse to administer the medical cannabis. This right to refusal is expressly stated in the enabling statute which reads “...a school nurse may not be required to administer medical cannabis to a student who is a qualifying patient.” (See Education Article, § 7-446, Annotated Code of Maryland). Under the guidelines, the school nurse’s responsibilities primarily center on maintaining specified

documentation in the student’s records, providing the mandatory medical cannabis training to designated school personnel, and addressing any symptoms that may arise from the administration of medical cannabis.

Health Occupations Article 88-6A-01(j)(1)

(j)(1) “Certified nursing assistant” means an individual regardless of title who routinely performs nursing tasks delegated by a registered nurse or licensed practical nurse for compensation.

Issue: This statutory definition of a CNA only permits the CNA to perform delegated nursing tasks which is contrary to the guidelines which would allow a CNA to administer medical cannabis after being designated by the school administrator and receiving the mandatory medical cannabis training.

Health Occupations Article 88-6A-02(a) and (b)

(a) Except as otherwise provided in this subtitle, an individual shall be certified by the Board to practice as a nursing assistant or medication technician before the individual may practice as a nursing assistant or medication technician in the State.

(b) This subtitle does not apply to an individual who:

- (1) Practices a health occupation that the individual is authorized to practice under this article;
- (2) Provides for the gratuitous care of friends, domestic partners, or family members;
- (3) Performs nursing assistant tasks while a nursing student enrolled in an accredited nursing program and practicing under the direct supervision of qualified faculty or preceptors;
- (4) Performs nursing assistant tasks as a student while:
 - (i) Enrolled in a Board-approved nursing assistant training program; and
 - (ii) Practicing under the direct supervision of qualified faculty or preceptors;
- (5) Performs medication technician tasks as a student while practicing under the direct supervision of qualified faculty; or
- (6) Works as a principal or school secretary, does not administer medication as a routine part of the position, and has completed training by the delegating nurse for the occasion where the individual may need to administer medication in the absence of the nurse or medication technician.

Issue. This statutory provision provides a list of exceptions from Board-certification as a nursing assistant or medication technician for individuals who administer medication and perform other CNA or CMT-related tasks. Per consistency, an exception for designated school personnel who administer medical cannabis under the school health guidelines should be added to this list of exclusions.

Because the Subcommittee developed the guidelines to operate wholly outside the scope of nursing delegation authority, questions and concerns persisted among various members of the nursing and

school health community. Interested stakeholders expressed a multitude of concerns about whether sufficient legal authority existed to administer medical cannabis under the guidelines without having an express exception from nursing functions and delegation laws carved out in the law.

The MMCC and MSDE representatives consulted with the attorneys general (AGs) representing MMCC, MSDE, and MBON as to whether any laws need to be changed to authorize the designated school personnel to administer medical cannabis. The AGs who were consulted advised that there was case law in Maryland which states that a later, more specific law prevails over an earlier more general law. The enabling statutes clearly permit caregivers and designated school personnel to administer medical cannabis to qualifying patients who are students on school property, at school sponsored activities, and on a school bus. As a later enacted and more specific provision, Health-General Article § 13-3304(g) (8) and Education Article §446 should be read to create an exception. See *State v. Ghahari*, 346 Md. 101, 116 (1997) (“when two statutes, one general and one specific, are found to conflict, the specific statute will be regarded as an exception to the general statute.”) Therefore, even without changes to the Nurse Practice Act or any other State laws pertaining to the delegation of nursing authority, as a later enacted and more specific provision, the guidelines should be the prevailing authority and should be implemented under the designation model developed by the Subcommittee.

The designated school personnel will be the linchpin of the success of each school’s efforts in the administration of medical cannabis to students. There is merit to ensuring that the school staff are as comfortable and secure as possible with the implementation of the guidelines. As such, MMCC suggested that to make the authority of the designated school personnel to operate outside of the nursing delegation model very clear, MMCC proposed an amendment to COMAR 10.27.11.01 – Delegation of Nursing Functions – Exclusion from Regulations to exclude the administration of medical cannabis in schools from nursing delegation requirements. In turn, the MBON agreed to consider this matter and vote on the proposed amendment.

Recommendations

Recommendation #1 – Amend COMAR 10.27.11.01 to expressly exempt administration of medical cannabis in the school setting from the nursing delegation requirements.

On November 18, 2020, the MBON heard testimony and considered MMCC’s proposed amendment to COMAR 10.27.11.01 – Delegation of Nursing Functions – Exclusion from Regulations to exclude the administration of medical cannabis in schools from nursing delegation requirements. Upon deliberation, the MBON voted unanimously to accept the amendment. (See Attachment B – Proposed Amendment to 10.27.11.01 Delegation of Nursing Functions – Exclusion from Regulations) The proposed amendment to COMAR 10.27.11.01 adds the administration of medical cannabis in the school setting to the list of exclusions from the regulatory nursing delegation requirements that currently exist, including when medication is administered by family, friends, or at youth camps.

Recommendation #2 – Amend Education Article §7-446 and Health Occupations Article §8-6A-02 to clarify that the Nurse Practice Act does not apply to and does not restrict or limit designated school personnel from administering medical cannabis to students in accordance with the school

health guidelines.

Similarly, the MMCC and MBON recommends that two statutory changes be made to provide that any requirements to administer medication under the delegation of nursing authority under the Nurse Practice Act is not applicable to and does not restrict or limit designated school personnel who administer medical cannabis to a student in accordance with the guidelines developed under Education Article §7-446. (See Attachment C – Proposed Amendment to Education Article §7-446 and Health Occupations Article §8-6A-01.)

These regulatory and statutory changes will make it very clear that the administration of medical cannabis in the school setting operates entirely outside of the nursing delegation model set forth by the Maryland Nurse Practice Act and COMAR 10.27. This will enhance the potential for the administration of medical cannabis in schools to be successful and will alleviate concerns that have been raised by members of the nursing and school health community surrounding professional responsibility, licensing and liability. These changes will also help to avoid any potential litigation that may have been pursued to clarify this matter.

The Subcommittee discussed the need to monitor the progress of the implementation of the medical cannabis in schools guidelines and have the schools report back to MSDE regarding any challenges they encounter. Because medical cannabis in schools was previously unprecedented in Maryland, the Subcommittee agreed to revisit the guidelines in the near future, if needed, to consider any modifications to the guidelines that may be beneficial based upon feedback received from the schools. (See *Guidelines for Public Schools Allowing the Administration of Medical Cannabis to Students* at the MSDE's website at www.mdschoolhealthservices.org).

MMCC and MBON extends its gratitude to the Subcommittee, MSDE staff, Office of the Attorney General representatives, Maryland Nurse's Association, and other interested stakeholders who assisted with the analysis of State laws in order to facilitate the development of this legislative report. We also appreciate the steadfast commitment by the Maryland General Assembly to expand health care access to students during school hours and events.

ATTACHMENT A

MEDICAL CANNABIS IN SCHOOLS GUIDELINES SUBCOMMITTEE

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ATTACHMENT B

Proposed Amendment to 10.27.11.01 Delegation of Nursing Functions – Exclusion from Regulations

SUMMARY

Makes an exception to the requirement to administer medication under the delegation of nursing authority for certain designated school personnel who administer medical cannabis to students who are qualifying medical cannabis patients on school property, at school-sponsored activities, and while on a school bus in accordance with certain school health guidelines.

10.27.11 Delegation of Nursing Functions

.01 Exclusion from Regulations.

This chapter is not applicable to and does not restrict or limit:

A. Other health care practitioners who are authorized delegatory powers under their respective acts;

B. The gratuitous provision of care by self, family, or friends;

C. Provision of care by a child care provider employed in the child's home by the child's parent or by a child care provider licensed by the Child Care Administration under COMAR 07.04.01 (Family Day Care) or COMAR 07.04.02 (Child Care Center Licensing) except for those providers enrolling a majority of children with health or medical conditions or both;

D. The cognitively capable adult from employing an unlicensed caregiver in the adult's home to assist the adult in treatments of a routine nature and in self-administration of medication;

E. An individual who performs nursing assistant tasks while a nursing student enrolled in an accredited nursing education program and practicing under the direct supervision of:

(1) Qualified faculty or preceptors; or

(2) A nurse while working as a nursing assistant;

F. An individual who performs nursing assistant tasks as a student while:

(1) Enrolled in a Board-approved nursing assistant training program;

(2) Practicing under the direct supervision of qualified faculty or preceptors; or

(3) Practicing under the direct supervision of a nurse while working as a nursing assistant;

G. A nurse from delegating a nursing task to an unlicensed individual if acceptance of delegated nursing tasks does not become a routine part of the unlicensed individual's job duties; or

H. A youth camp regulated in accordance with COMAR 10.16.06.

I. Designated school personnel who administer medical cannabis to students who are qualifying medical cannabis patients on school property, at school-sponsored activities, and on a school bus in accordance with guidelines developed under Education Article, §7-446, Annotated Code of Maryland.

ATTACHMENT C

**Proposed Amendment to Education Article, 87-446 and
Health Occupations Article 88-6A-01**

A BILL ENTITLED

AN ACT concerning

**Delegation of Nursing Functions – Exclusion for Administration of Medical
Cannabis During School Hours and Activities**

FOR the purpose of clarifying an exception to the requirement to administer medication under the delegation of nursing authority under certain circumstances pertaining to the administration of medical cannabis to students who are qualifying medical cannabis patients on school property, at school-sponsored activities and while on a school bus; and generally relating to the Maryland Medical Cannabis Program.

BY repealing and reenacting, without amendments,
Article – Education
Section 7-446(a)
Annotated Code of Maryland
(2019 Replacement Volume and 2020 Supplement)

BY adding to
Article – Education
Section 7-446(e)
Annotated Code of Maryland
(2019 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, without amendments,
Article – Health Occupations
Section 8-6A-02
Annotated Code of Maryland
(2019 Replacement Volume and 2020 Supplement)

**SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
MARYLAND, That the Laws of Maryland read as follows:**

Article – Education

7-446.

(a) On or before December 31, 2020, the Department and the Natalie M.

LaPrade Medical Cannabis Commission jointly shall develop guidelines for public schools allowing the administration of medical cannabis to students who are qualifying patients under Title 13, Subtitle 33 of Health-General Article during school hours and school-sponsored activities and while on a school bus.

(E) ANY REQUIREMENTS TO ADMINISTER MEDICATION UNDER THE DELEGATION OF NURSING AUTHORITY UNDER TITLE 8 OF THE HEALTH OCCUPATIONS ARTICLE OR ANY OTHER STATE LAW IS NOT APPLICABLE TO AND DOES NOT RESTRICT OR LIMIT DESIGNATED SCHOOL PERSONNEL WHO ADMINISTER MEDICAL CANNABIS TO A STUDENT WHO IS A QUALIFYING PATIENT IN ACCORDANCE WITH THE GUIDELINES DEVELOPED UNDER THIS SECTION.

Article – Health Occupations

8-6A-02.

(a) Except as otherwise provided in this subtitle, an individual shall be certified by the Board to practice as a nursing assistant or medication technician before the individual may practice as a nursing assistant or medication technician in the State.

(b) This subtitle does not apply to an individual who:

(1) Practices a health occupation that the individual is authorized to practice under this article;

(2) Provides for the gratuitous care of friends, domestic partners, or family members;

(3) Performs nursing assistant tasks while a nursing student enrolled in an accredited nursing program and practicing under the direct supervision of qualified faculty or preceptors;

(4) Performs nursing assistant tasks as a student while:

(i) Enrolled in a Board–approved nursing assistant training program; and

(ii) Practicing under the direct supervision of qualified faculty or preceptors;

(5) Performs medication technician tasks as a student while practicing under the direct supervision of qualified faculty; [or]

(6) Works as a principal or school secretary, does not administer medication

as a routine part of the position, and has completed training by the delegating nurse for the occasion where the individual may need to administer medication in the absence of the nurse or medication technician[.] **OR**

(7) ADMINISTERS MEDICAL CANNABIS TO A STUDENT WHO IS A QUALIFYING MEDICAL CANNABIS PATIENT WHILE WORKING AS DESIGNATED SCHOOL PERSONNEL ACTING IN ACCORDANCE WITH GUIDELINES DEVELOPED UNDER §7-446 OF THE EDUCATION ARTICLE.

(c) Nothing in this section shall preclude a registered nurse or licensed practical nurse from delegating a nursing task to an unlicensed individual provided that acceptance of delegated nursing tasks does not become a routine part of the unlicensed individual's job duties.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly and shall take effect from the date it is enacted.