

Updates

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New Legislation Lets Students Use Medical Marijuana at School

Washington Governor Jay Inslee signed into law legislation in April 2019 that requires school districts to allow parents and guardians to administer to their child marijuana-infused medications on school grounds, in school vehicles and at school-sponsored activities. While the new bill builds on Washington's status as a state leader in marijuana rights, it may spell trouble for schools.

Medical Use of Marijuana in Washington

Qualified patients have been legally allowed to consume marijuana for medical purposes in Washington since 1998. To be considered "qualified," patients must be diagnosed with a qualifying terminal or debilitating medical condition by a licensed healthcare professional who authorizes the patient's treatment with medical marijuana. When the patient is under 18 years old, state law requires the minor's parent or guardian to agree to treatment with medical marijuana. Further, both the minor patient and the parent or guardian must be entered in the medical marijuana authorization database.

House Bill 1095

The new law, House Bill 1095, effective July 28, 2019, obligates schools to permit students who are qualified patients to use marijuana for medical purposes at school, at school-sponsored events and on school buses. The legislation also requires school boards to adopt a policy permitting such use. The policy must do the following:

1. Require a student using medical marijuana to meet the requirements of [RCW 69.51A.220](#);
2. Require the student's parent or guardian to provide the medical marijuana and assist the student in consumption;
3. Establish protocols to verify that the student meets the requirements for medical use of marijuana and that the parent or guardian is the student's designated provider;
4. Authorize parents or guardians to administer marijuana-infused products to a student while on school grounds at an identified location, on a school bus or at a school-sponsored event;
5. Identify locations on school grounds where medical marijuana products may be administered by the parent or guardian; and
6. Prohibit the consumption of medical marijuana by smoking or inhalation.

Although the legislation may appear to conflict with schools' drug-free stance, some aspects of the legislation reinforce that philosophy. First, the bill prohibits smoking of medical marijuana and does not permit recreational use. Second, it requires parents—not school employees—to administer the medication. School nurses and healthcare assistants are not required to store or administer the treatments, nor are they implicitly authorized to do so. Third, as long as school employees adhere to board policy, they will be protected from civil, criminal and professional repercussions, but they are neither required nor authorized to have any role beyond accommodating the parent's administration of the treatment. Finally, the law does not change school districts' obligation to prohibit use of marijuana by students who are not medically qualified and to discipline such students and prohibit employees from using marijuana at school or coming to school under the influence.

Effects on Federal Funding and Conflict With Federal Law

Although increasing the medical treatment options for students, this new state law may get schools in hot water with federal funding requirements and the Drug-Free Schools and Workplace Act.

The federal government has not legalized the use of marijuana for medical purposes for either adults or minors, on or off school grounds. Under the federal Controlled Substances Act, marijuana is classified as a Schedule I substance and therefore marijuana manufacturing, possession or distribution is a federal criminal offense. Most importantly, recipients of federal funding, such as school districts, are prohibited from possessing or using marijuana and must certify under federal regulations that they have adopted a drug-free workplace policy and drug prevention program.

The Washington State School Directors Association commented in July on the potential risks of compliance with House Bill 1095 to federal funding. Recipients of federal funds must make a good faith effort to maintain drug-free schools and workplaces, and it is in the federal agency's discretion to determine if this condition has been met. The risk that funding will be suspended, however, is unclear given that New Jersey passed a similar bill in 2015 with no withholding of funds to date.

In response to these concerns, Section 4 of the new law provides for immediate suspension of its implementation if the federal government indicates federal funding will be withheld from schools as a result.

Next Steps: Developing a Compliant Policy

School districts should make sure they have adopted a policy to implement House Bill 1095 for students who are authorized for treatment with medical marijuana. Contact experienced counsel to assist with developing a compliant policy.

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