

ADVISORY BULLETIN: SCHOOL PERSONNEL ADMINISTERING MEDICAL MARIJUANA

January 9, 2019

[H.B. 18-1286](#) is an expansion of the current law commonly known as “Jack’s Law” ([C.R.S. 22-1-119.3](#)). H.B. 18-1286 became effective on June 4, 2018 with the Governor’s signature. **Please be sure to review these regulations for the full explanation relating to school personnel administering medical marijuana to a student.** The following is an overview of the changes to existing law.

Current Law (H.B. 16-1373)

Currently under Jack’s Law, a primary caregiver may possess and administer medical marijuana to a student at school, on a school bus, or at a school sponsored event, if the student has a valid recommendation for medical marijuana and the marijuana is in a non-smokeable form. The primary caregiver must remove any remaining medical marijuana from the school after administering it.

Jack’s Law allows the individual school to adopt policies regarding who may act as a “primary caregiver” and reasonable parameters for the administration of non-smokeable medical marijuana. Although a school cannot discipline a student or deny admission to a student who holds a valid recommendation for medical marijuana solely because the student requires this accommodation, a school is permitted to deny the administration of medical marijuana per Jack’s Law if the school loses federal funding as a result of compliance with Jack’s Law or posts on its website in a conspicuous place a statement regarding its decision not to comply.

School Personnel Expansion

H.B.18-1286 expands who can administer medical marijuana to a student to include “school personnel” and sets certain requirements for administration. “School personnel” is defined as school personnel designated by agreement between the principal or his or her designee and a parent or legal guardian.

The bill provides an exception to the state criminal laws related to marijuana for this administering purpose, but it should be noted that the state legislature cannot provide an exception to federal laws which still prohibit the possession of marijuana. The bill is clear that school nurses or school personnel should never be required to administer medical marijuana to a student. This bill does not apply during school activities that take place out of the state.

If administration of medical marijuana is conducted by school personnel, the school must first ensure the following items are in place:

1. The principal or his or her designee and the parent or legal guardian of each qualifying student must sign a written plan for the administration of medical marijuana in a non-smokeable form. This should specify the school personnel in charge of storing and administering the non-smokeable medical marijuana;
2. The qualifying student’s parent or legal guardian must complete and submit to the school a written medical marijuana recommendation that includes the signature of one of the recommending physicians and the purpose, recommended dosage, frequency, and length of time between dosages of the medical marijuana; and
3. A written statement from the student’s parent or legal guardian releasing the school, and employees and volunteers of the school, from liability, except in cases of willful or wanton conduct or disregard of the criteria of the treatment plan.

Once those items are in place and the written plan commences, the student's parent, guardian, or designee must deliver directly to the person designated by the school as the individual who secures the medical marijuana the medical marijuana in a container that contains clearly labeled instructions or the plan for administration must clearly specify instructions for the dosing, timing, and delivery route instructions from the student's recommending physician. In addition, the medical marijuana must be kept in a locked storage container while on school grounds and any unused portions must be returned to the student's parent, guardian, or designee at the end of each school day. The student him/herself shall never handle the medical marijuana at school, on the school bus, or at a school-sponsored activity.

A school can still exempt itself from the administration of medical marijuana if it loses federal funding as a result or posts on its website in a conspicuous place a statement regarding its decision not to comply.

Policy Considerations

- Jack's Law allows administration of non-smokeable medical marijuana by a primary caregiver and by school personnel. Your policy should clearly define both "primary caregiver" and eligible "school personnel."
- A school can exempt itself from the administration of non-smokeable medical marijuana by a primary caregiver and/or school personnel. Any such exemption should be clear as to whether the school is waiving the administration by either or both.
- The policy should detail how the medical marijuana must be handled and stored at school, on a school bus, and at a school-sponsored event, and specifically exempt the administration by school personnel that would occur outside the state of Colorado.
- The policy should state the elements that are required prior to commencing the administration of medical marijuana (e.g., written plan, physician recommendation, liability release).
- The policy should be adopted by your board.
- The policy should be clear that no school nurse or personnel will be required to administer non-smokeable medical marijuana to a student if he or she so chooses.

CBD Oil

Jack's Law does not directly address CBD oil; however, because CBD oil is regulated like medical marijuana, it should likely follow the same administration procedures that you use for medical marijuana described above. Generally, CBD oil for children will require the child to qualify for the Colorado medical marijuana registry. There is currently one exception to that which is a CBD product called Epidiolex. Epidiolex can be prescribed with a regular doctor's prescription and does not require a child to qualify for the medical marijuana registry.

If you have additional questions about administering CBD oil to children or questions from parents about prescriptions, please talk with your school's attorney to determine the best path on administering.

References

[C.R.S. 22-1-119.3\(3\)\(a\)\(II\)](#) (*Jack's Law*)
[H.B. 18-1286](#)

Resources

[Sample Policy](#)