

Real Life? Real Answers.

HYNUM LAW

Medical Marijuana AND Current Issues in PA Long Term Care

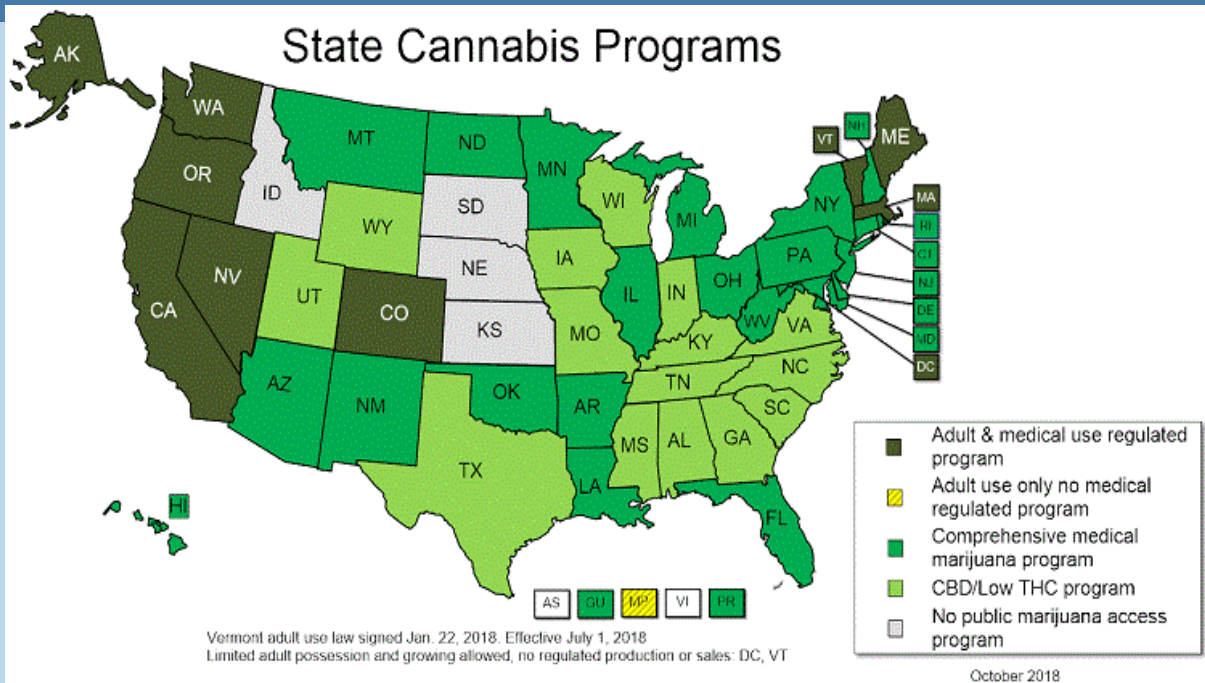
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A LITTLE ABOUT ME

- Attended Penn State University and obtained his Law Degree from the Widener University School of Law in Harrisburg, Pennsylvania.
- approximately eleven years working in the long-term health care industry,
- **Licensed Nursing Home Administrator,**
- 11 years in long-term healthcare industry (CEO, administrator)
- Over 17 years practicing law
- Platinum Plus member of PHCA

A LITTLE ABOUT ME [CONT'D]

- Areas of Focus:
 - ❖ Healthcare Law – GUARDIANSHIPS, COLLECTION, COMPLIANCE
 - ❖ Administrative/Government Law,
 - ❖ Labor & Employment Law,



BRIEF OVERVIEW

- Lawful/unlawful use
- Conditions that allow use
- Physician certification
- Patient approval
- State of laws & regulations in PA

Policy and Procedure Considerations

- notification procedure when marijuana is brought to facility by resident or caregiver
- Where can it be used?
 - smoking/no smoking policies?
- Storage
- Cost – Medicaid/Insurance coverage?
- Will facility administration have access?
- Guardianships & POA's

Legal Considerations Regarding Medical Marijuana

- Current legal landscape - State level
- Current legal landscape – Federal level
- How current law relates to physicians/ residents in LTC
- Congressional legislative approach

Federal Approach to Marijuana

- Controlled Substances Act (CSA) (21 U.S.C. § 841(a))
 - Marijuana is classified as Schedule I (no currently accepted medical use, high potential for abuse; e.g., heroin, LSD)
- DEA
 - August 11, 2016, Acting DEA Administrator Chuck Rosenberg denied petitions (by 2 governors) to reclassify marijuana.
 - DEA stated, ““We fully support legitimate medical and scientific research on marijuana and its constituent parts and we will continue to seek ways to make the process for those researchers more efficient and effective.”

Bipartisan Congressional (and White House?) Support

- “Medical marijuana patients obeying state law should not have to worry about federal arrest or losing their state-regulated source of medicine.” Sen. Mikulski
- Trump Administration has allegedly made “solid commitment” to FIX marijuana regulation as soon as spring 2019 but for sure in the next legislative session.

Pennsylvania

- STILL no regulations applicable to MM in nursing homes or PCH’s
- So far, facilities have not received ‘push-back’ for prohibiting use
- Some facilities ARE allowing use

What can we expect?

- New York emergency regulations deemed facilities 'caregivers' in 2017
- The New York Times stated that in Washington state, "at least a dozen assisted living facilities have formal medical marijuana policies in response to demands from their residents."
- new regulation by the Massachusetts Department of Public Health, permit staff members at LTCFs to act as "personal caregivers"
- Although regulations allow assistance with MM, individual facilities MAY BE ANTI-MM.

What can we expect? [cont'd]

- Washington:

sample P&P

<http://www.whca.org/files/2013/04/sample-medical-marijuana-policy.pdf>

authorization form

https://content.govdelivery.com/attachments/WADOH/2017/08/08/file_attachments/860250/SAMPLE-NewAuthorizationFillableForm.pdf

authorization form guidelines

https://content.govdelivery.com/attachments/WADOH/2017/08/08/file_attachments/860237/NewAuthorizationGuidelines.pdf

What can we expect? [cont'd]

- Minnesota:

Hospital Association has published THREE different policy templates

1. MM Not allowable
2. Continue as self-directed therapy
3. Continue with MM incorporated into medication process

<https://www.mnhospitals.org/Portals/0/Documents/patientsafety/MedCannabis/Medical%20Cannabis%20Documentation.pdf>

Practical Considerations for LTC

- What does State law permit?
- Can physicians prescribe, recommend or neither?
- Can nurses store on medical carts (or elsewhere)?
- Can nurses administer?
- documented on the MAR? If so, how?
- Are there designated areas for smoking medical marijuana?
- Can a staff member assist a resident who needs supervised smoking?
- How will qualified caregivers be trained to administer the medication?
- What are the implications for SNFs, physicians, nurses, and caregivers if a caregiver transports medical marijuana across state lines?

??WORKING WITH LEGAL COUNSEL TO ADDRESS??

Can doctors be prosecuted for signing a certification?

- Pennsylvania's law explicitly protects doctors from punishment. It states that a physician is not subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege including civil penalty or disciplinary action, solely for his or her participation in the program. Sec. 2103 (A)(3)
- ***According to our best information, no doctors have been prosecuted for recommending medical marijuana in states with medical marijuana programs.***

LTC Providers' Conundrum

Resident rights vs. Federal Law

- 42 C.F.R. § 483.75(b) SNFs must comply with "Federal, State, and local laws and professional standards."
- 42 C.F.R. § 483.10 Resident rights, including right of accommodation of needs, freedom of choice, and self-administration of medications.

Employment Issues

- Anti-Discrimination provision

Cannot:

- discharge, threaten, refuse to hire or otherwise discriminate or retaliate against employee regarding
 - compensation, terms, conditions, location or privileges

...Based solely upon status as individual certified to use medical marijuana*

* 2103(b)(1)

Employment Issues [cont'd]

- Noffsinger v. SSC Niantic Operating Co, LLC*

- Connecticut Palliative Use of Marijuana Act (PUMA)
- Anti-discrimination provision in PUMA provides ***implied right of action***
- zero tolerance pre-employment testing policy violates anti-discrimination provision in Connecticut law
- Federal DRUG FREE WORKPLACE ACT does not REQUIRE drug testing and does not PROHIBIT employment of person using MM outside workplace
- Connecticut's PUMA anti-discrimination clause mirrors PA's

*case in Connecticut's Federal District Court

Resources & Suggestions

- State LTC Ombudsman
- State survey agency
- State Departments of Health and DEA
- Obtain consent from resident, POA or guardian
- Review guidance from professional organizations
- Develop and implement appropriate policies and procedures
- Adopt (and periodically review) appropriate guidelines
- Involve compliance and ethics programs as well as QAPI Committee
- **CONSULT COMPETENT LEGAL COUNSEL**

Recommendations (cont'd)

- Ethical Considerations/Committee?
- Consult Insurance carrier/broker
- Enroll in list serves, etc.
 - <https://www.pa.gov/guides/pennsylvania-medical-marijuana-program/>
 - Marijunadoctors.com
 - Mpp.org (marijuana policy project)
 - Norml.org (organization working to reform marijuana policy)
 - <https://www.pamedsoc.org/advocate/topics/medical-marijuana> (PA Medical Society)
 - <https://www.facebook.com/thecannaproject/>
 - <http://icrs.co/> (International Cannabis Research Society)

The time to consider your approach is now!

