Client Alert: Ryan's Law: Terminally Ill Patients are Finally Allowed Marijuana in CA Hospitals

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On September 28, 2021, Governor Newsom approved Senate Bill 311, better known as "Ryan's Law." The legislation requires hospitals and certain health facilities to allow terminally ill patients to use medical cannabis, subject to certain restrictions. Governor Newsom had previously vetoed a prior iteration of the bill (SB 305) in 2019, owing to fears that participating hospita or hospices might jeopardize Medicare and Medicaid (CMS) reimbursements if they permitted medical cannabis onsite, as marijuana remains illegal under federal law. Sponsoring Senator Ben Hueso (D-San Diego) spoke to the repeated setbacks facing the legislation: "It is inconceivable to me that, in a state where medical cannabis was legalized more than 25 years ago those in deepest suffering receiving treatment in our state's healthcare facilities cannot access this proven, effective, and prescribed treatment."

Why Now?

A confluence of factors helped to allay fears associated with permitting marijuana use in health facilities. Since FY2014, congressional omnibus bills have included a rider prohibiting the Department of Justice from using taxpayer fund to prevent states from "implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana." AG Merrick Garland has articulated the Biden Administration's "hands-off" approach with regards to state marijuana laws. Mos significantly, CMS specifically assured California legislators that it would not pull funding for participating hospitals without DO backing.

What Must Health Facilities Know

Healthcare administrators and managers should take note of some important caveats and qualifications.

- While healthcare facilities *cannot* prohibit "patient use of medicinal cannabis due solely to the fact that cannabis is a Schedule I drug," there is a safe harbor clause that, should federal regulatory agencies reinstate cannabis enforcement, healthcare facilities may suspend compliance with state law.
- Although a hospital must allow patient access, it need not *procure* or *provide* medical cannabis, or *dispense* medical marijuana from its pharmacy. This 'arms-length' length approach was designed to buffer healthcare facilities should fede enforcement revive under a new administration.
- The legislation applies only to those who are "terminally ill," that is patients with a life prognosis of "one year or less, should the disease follow its natural course."
- State hospitals and chemical dependency recovery hospitals are excluded from the measure.
- The measure does not apply to emergency departments or patients receiving emergency care.

Required Actions

The California measure requires affected hospitals and healthcare facilities to undertake several actions. In summary, they must:

- Establish written guidelines for the use of medical cannabis on their premises.
- Provide the patient with a "locked container" to secure the cannabis, to ensure the safety of others.
- Obtain a copy of patient's marijuana identification card or a letter from attending physician stating patient's need for medicinal cannabis.
- Include the use of medicinal cannabis in patient's medical records.
- Prohibit smoking or vaping as methods of use.

We advise healthcare facilities to review compassionate cannabis guidelines with their counsel before implementation.

Nelsonn Hardiman LLP

Healthcare Law for Tomorrow

Nelson Hardiman regularly advises clients on cannabis related laws and regulations. We offer legal services to businesses at every point in the commercial stream of medicine, healthcare, and the life sciences. For more information, please contact info@nelsonhardiman.com

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