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**HYNUM LAW**



# Dispensing the Truth Through the Haze: Medical Marijuana in PA Long Term Care

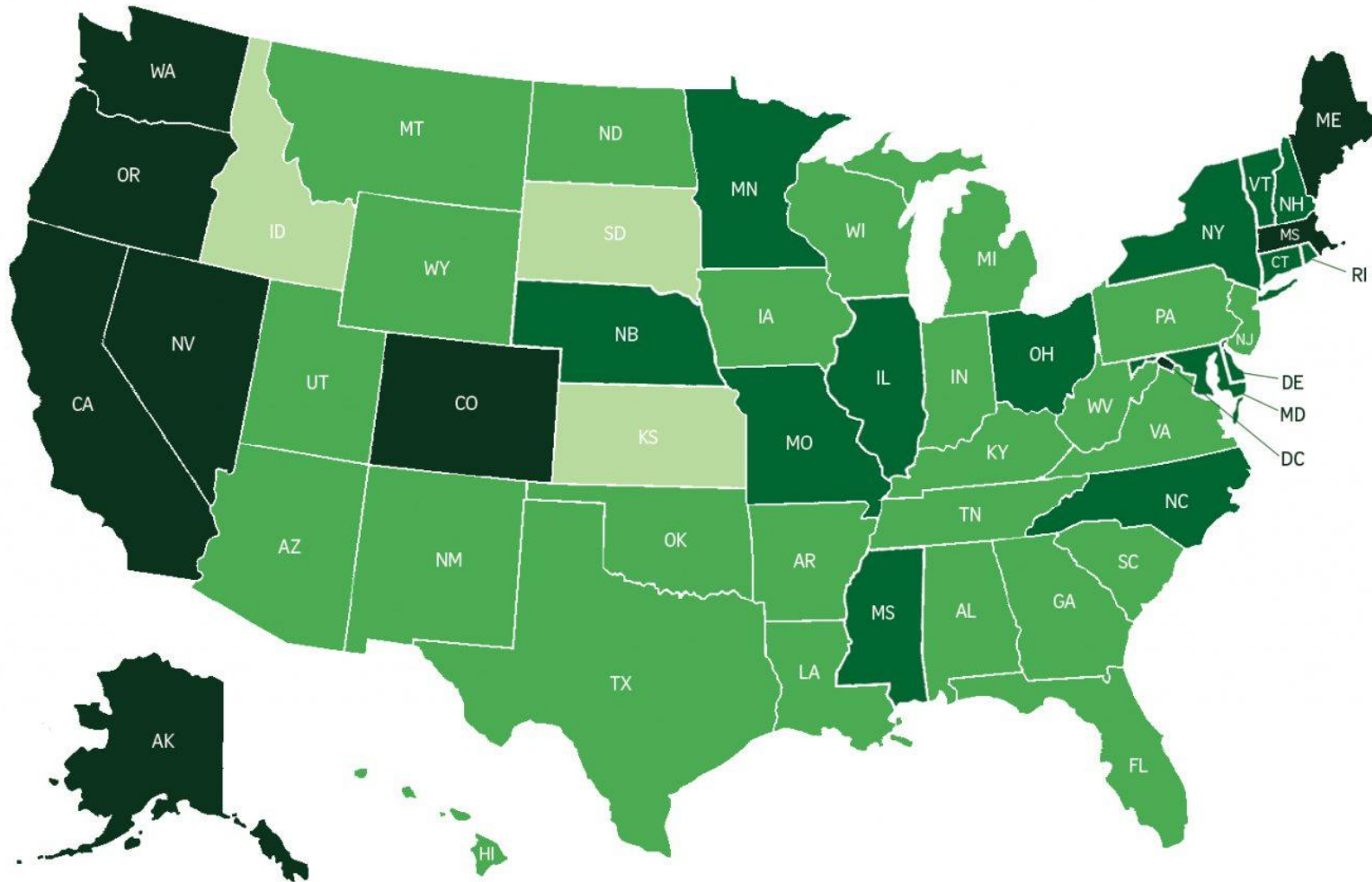
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# Learning Objectives

By the end of the session, participants will be able to:

- 1) Understand the state of the Law in PA
- 2) Understand rationale for use
- 3) Understand risks of marijuana use medically and legally

# MARIJUANA LAWS BY STATE



## Legalized

Adults can purchase, possess and cultivate marijuana for personal use, whether medical or recreational.



## Decriminalized

Typically means no arrest, prison time, or criminal record for the first-time possession of a small amount of marijuana for personal use. All of these states, excluding Nebraska, also allow medical marijuana and/or CBD use.



## Medical/CBD Use Only

No state-level criminal penalties on the use of medical marijuana. Some of these states have CBD-specific laws, singling out the non-psychoactive component of marijuana.



## Illegal

No active laws legalizing the use of marijuana.

# What is a “serious medical condition” under the act?

- Amyotrophic lateral sclerosis
- Autism
- Cancer
- Crohn’s disease
- Damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity
- Epilepsy
- Glaucoma
- Human immunodeficiency virus (HIV)/Acquired immune deficiency syndrome (AIDS)
- Huntington’s disease
- Inflammatory bowel disease
- Intractable seizures
- Multiple sclerosis
- Neuropathies
- Parkinson’s disease
- Post-traumatic stress disorder
- Severe chronic or intractable pain of neuropathic origin or severe chronic or intractable pain in which conventional therapeutic intervention and opiate therapy is contraindicated or ineffective
- Sickle cell anemia

# Pennsylvania Medical Marijuana Act

## **What is medical marijuana?**

- Under Act 16 of 2016 (the Act or Medical Marijuana Program), the term “medical marijuana” refers to marijuana obtained for a certified medical use by a Pennsylvania resident with a serious medical condition and is limited by statute in Pennsylvania to the following forms:
  - pill;
  - oil;
  - topical forms, including gel, creams or ointments;
  - a form medically appropriate for administration by vaporization or nebulization, excluding dry leaf or plant form;
  - Tincture (solution made by dissolving in alcohol); and
  - liquid.

# **Can patients with a serious medical condition receive medical marijuana if they are under the age of 18?**

Yes, patients may use one of these as a caregiver:

- Parents
- Legal guardians
- Third-party caregiver

# PA Safe Harbor Letter

## Safe Harbor

- The Pennsylvania Safe Harbor Letter is available to parents, legal guardians, caregivers and spouses of a minor under the age of 18 who suffers from one of the seventeen [serious medical conditions](#) defined in the Medical Marijuana Act.

## Information Needed to Complete the Safe Harbor Application

- Prior to beginning the Safe Harbor Letter application process, please make sure you have all of the required documents and information necessary to submit your application.

All applicants will need:

- Completed electronic copy of the [Safe Harbor Physician](#) form; and
- Completed electronic copy of [Pennsylvania background check \(instructions\)](#).
- Legal guardians will need an electronic copy of their guardianship papers.
- Caregivers will need an electronic copy of their [caregiver status](#).
- Spouses will need an electronic copy of their marriage certificate.

# Can someone else obtain medical marijuana on behalf of a patient?

Patients can designate two caregivers.

- Caregivers must apply and register with the PADOH.
- Caregivers must complete a background check.

## Who can be a 'caregiver' under the Act?

An individual 21 years of age or older, unless otherwise authorized, such as parents, legal guardians or third-party caregivers.

A caregiver can have up to 5 patients



# Practitioner Registry

- Opened on July 26, 2017
- Once physicians register and complete the required continuing education, they can be approved to participate in the program
- 75% of the 191 physicians participating in survey stated they will register to participate
- Continuing education providers have been approved to offer the four-hour training required for practitioners:
  - [The Answer Page Inc.](#) and
  - [Extra Step Assurance LLC](#)

# How can a physician register for the medical marijuana program?

- Visit the PADOH website at [www.medicalmarijuana.pa.gov](http://www.medicalmarijuana.pa.gov).
- Click on physicians to find the practitioner registry.

NOTE: As of early March, 794 have registered and of those, 433 have completed the training to become certified practitioners.

# Can doctors be prosecuted for signing a certification?

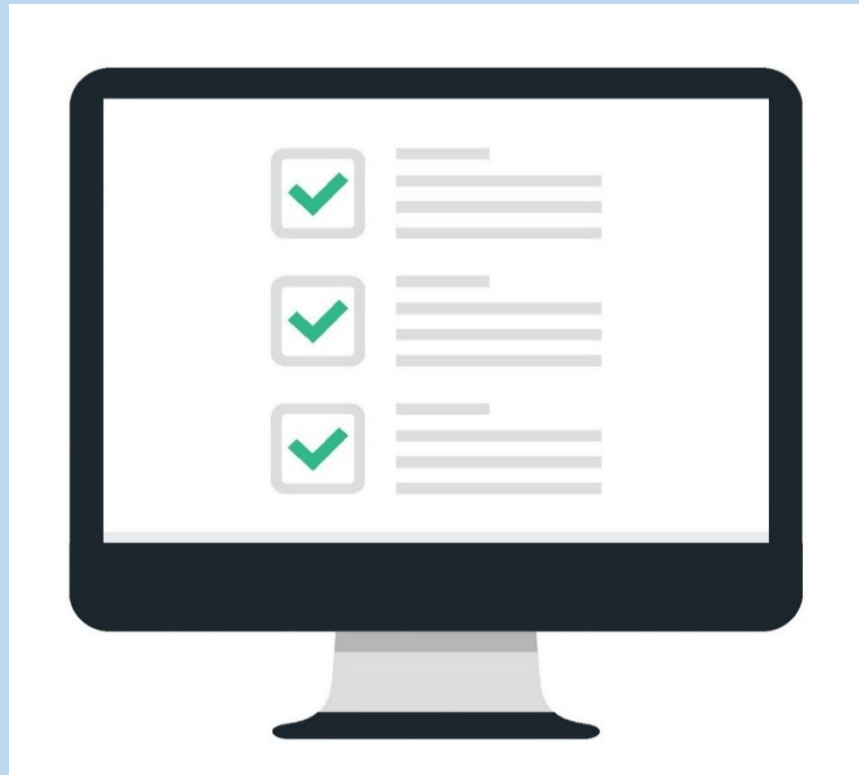
- Pennsylvania's law explicitly protects doctors from punishment. It states that a physician is not subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege including civil penalty or disciplinary action, solely for his or her participation in the program. Sec. 2103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

# How does a patient participate in the program?

- A patient with a qualifying condition and a doctor's certification can apply to the Department of Health to enroll in the program. If the application is accepted, the department will issue the patient and/or his or her caregiver an identification card, which will allow them to access medical marijuana from a state-permitted dispensary. If found in possession of medical marijuana in a form and quantity that is allowed under the patient's certification, the identification card also provides protections from arrest and conviction.

# How does a patient participate in the program?

As of early March, more than 21,000 patients had registered to participate in the medical marijuana program, with more than 6,000 certified by a physician. More than 2,200 patients had already received medical marijuana at a dispensary.



Patients and caregivers may register now on the PADOH website at: [www.medicalmarijuana.pa.gov](http://www.medicalmarijuana.pa.gov).

## **Where can patients or caregivers obtain medical marijuana?**

Patients and caregivers obtain medical marijuana at an approved dispensary that has been issued a permit from the PA Department of Health.

# Growing & Processing

- On June 20 2017, the PA DOH issued 12 permits for growers & processors
- DOH teams perform a series of site inspections before locations can be certified as operational. Once that happens, the permittees will be able to begin growing and processing medical marijuana
- The Office of Medical Marijuana received 457 total applications: 177 for growers/processors; and 280 for dispensaries.
- 12 current grower/processors: <http://tiny.cc/ljqqsy>
- PA now taking application for “Phase 2”
- During Phase 2, DOH intends to issue up to 13 grower/processor permits, and up to 23 dispensary permits

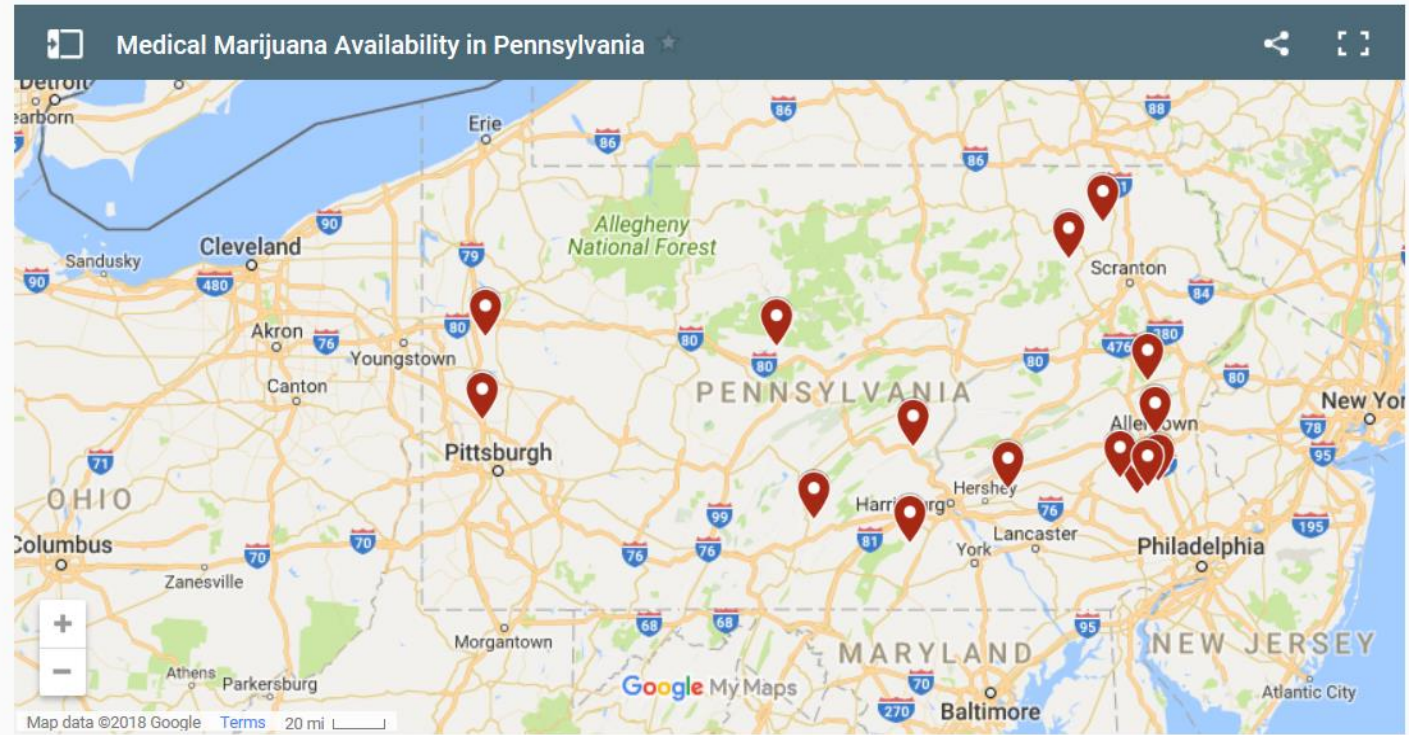
# Dispensaries

- On June 29, 2017 the PA Dept. of Health granted 27 permits for Medical Marijuana Dispensaries.
- Each of the 27 permit holders is eligible to open a total of 3 locations
- 12 Dispensaries now operational



# Dispensaries

Click on the pins on the map below to view dispensary information, including address, contact information, and product availability.



## Resources for Dispensaries



\*Dots represent counties where permits are issued, not specific locations.

# How can changes be made to Pennsylvania's medical marijuana program?

## Medical marijuana advisory board

- Designees with knowledge and experience in issues related to care and treatment
- Family or household members of patients
- Patient advocates

# Medical Marijuana Advisory Board

- Link to Board power point presentation

<https://bit.ly/2HF0ebs>

Earlier this month, the Advisory Board made a recommendation to DOH that dry leaf form marijuana. DOH has up to one year to act upon that recommendation

# Medical Marijuana Act also

- Facilitates research
- Provide funding for:
  - Drug abuse prevention
  - Counseling and treatment services
  - Local police departments
- Help patients with associated costs:
  - Aid for application fee
  - Background checks for caregivers
  - Reduced costs for medical marijuana

# Unlawful Use

- Unlawful use described.--It is unlawful to:

- (1) Smoke medical marijuana.

- (2) Except as provided in subsection (c), incorporate medical marijuana into edible form.

- (3) Grow medical marijuana unless the grower/processor has received a permit from the department under this act.

- (4) Grow or dispense medical marijuana unless authorized as a health care medical marijuana organization under Chapter 19.

- (5) Dispense medical marijuana unless the dispensary has received a permit from the department under this act.

(c) Edible medical marijuana.--Nothing in this act shall be construed to preclude the incorporation of medical marijuana into edible form by a patient or a caregiver in order to aid ingestion of the medical marijuana **by the patient.**

# Legal Considerations Regarding Medical Marijuana

- Objectives:
- Examine current legal landscape - State level
- Examine current legal landscape – Federal level
- Explore how current law relates to physicians/ residents in LTC
- Review recent actions by DEA
- Review important court decisions
- Review 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.”



# U.S. Department of Justice (DOJ)

- Realizing the growing trend in medical marijuana and increasing body of scientific evidence of the efficacy of CBD, as well as the expanding number of states that have legalized medical marijuana, the DOJ issued an official memo to all U.S. Attorneys suggesting “prosecutorial discretion.”
- Deputy Attorney General James M. Cole issued a memo on August 29, 2013 suggesting that the DOJ not prosecute the possession, growth, use or sale of medical marijuana where there are “robust” local laws.



# DOJ Memo (from Obama Admin)

- “In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above. Indeed, a robust system may affirmatively address those priorities by, for example, implementing effective measures to prevent diversion of marijuana outside of the regulated system and to other states, prohibiting access to marijuana by minors, and replacing an illicit marijuana trade that funds criminal enterprises with a tightly regulated market in which revenues are tracked and accounted for. **In those circumstances, consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity.** If state enforcement efforts are not sufficiently robust to protect against the harms set forth above, the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms.”
- Excerpt from Deputy Attorney General Cole Memo (August 29, 2013)

# DOJ Memo (from Obama Admin)

- Under the Cole memo guidance, the medical cannabis industry continued to evolve with more than half the states now allowing some form of medical cannabis use and commercial activity, and states including California, Colorado, Washington and Nevada permitting recreational or adult use of recreational cannabis.

# About Face?

- AG Jeff Sessions announced Thursday Jan. 4 that he is rescinding the Cole memo, which reflected the Department of Justice's relatively passive policy under the Obama administration since August 2013 on enforcement of federal cannabis laws.
- the landscape has shifted so dramatically in recent years that some of the harshest critics of Sessions were senators and representatives, many of them prominent [Republicans](#), from states with cannabis programs that generate much-needed medicine and tax revenue. They expressed outrage over this action by Sessions, claiming it belies promises he made to them before being confirmed by the Senate

# About Face? (cont'd)

- Aside from Sessions' announcement being unpopular, it is questionable whether it really has any “teeth” because the medical and even recreational cannabis industry has grown so big that it would be difficult if not impossible to slow it down -- let alone eliminate through federal enforcement.
- Sessions did not announce that there would be a crackdown on cannabis businesses
- It will be left to the discretion of the local US attorneys in each district to decide how and when to enforce the federal laws which doesn't amount to much of a substantive change in policy.

# Pennsylvania Response

- Within hours after Sessions' announcement, Governor Wolf vowed to protect Pennsylvania's fledgling medical marijuana program from federal "overreach."
- Auditor General Eugene DePasquale, who has proposed that the state permit recreational marijuana use, said in his own statement that
  - Sessions "is stuck in the Dark Ages."
  - "He is using finite federal resources to fight a war against drugs that was lost decades ago,"
  - "He showed just how clueless he really is by comparing marijuana to heroin."
- the U.S attorney for Pennsylvania's Middle District said he has no intention to disrupt the state's medical marijuana business.

# Congressional Approach to Medical Marijuana

- **The Rohrabacher-Farr amendment** (now titled Rohrabacher-Blumenauer since Rep. Samuel Farr's retirement in 2017) prevents the Department of Justice from spending federal funds to prosecute cannabis-related activities if they are permitted under state-specific medical marijuana laws.
- The amendment was included in 2018 Federal spending legislation.
- So, we have status quo, but no guarantees beyond 2018.

# 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?
- How is medical marijuana documented on the MAR?
- 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?



## What Would Policies and Procedures Need to Include?

- Notification upon admission of P&Ps
- Proof of registration (May need a confidential registry waiver)
- Proof of identity and relationship with primary caregiver
- Agreement by provider and patient to abide by facility policies and procedures related to marijuana use
- Sample P&Ps from Washington Health Care Assn...

# Washington State sample Medical Marijuana Policy (as found on WHCA website)

## MEDICAL MARIJUANA

### POLICY:

This community supports the client's right to use medical marijuana consistent with the provisions of Washington's Medical Marijuana statute, chapter 69.51A RCW, as approved and directed by his/her health care professional and under certain circumstances within this long term care setting

### PROCEDURE:

1. A client who uses medical marijuana in this setting must :
  - a. Be a "qualifying patient" under the provisions of RCW 69.51A. A "qualified patient" means a person who:
    - i. Is a patient of a healthcare professional. "Health care professional," means a physician licensed under chapter 18.71 RCW, a physician assistant licensed under chapter 18.71A RCW, an osteopathic physician licensed under chapter 18.57 RCW, an osteopathic physicians' assistant licensed under chapter 18.57A RCW, a naturopath licensed under chapter 18.36A RCW, or an advanced registered nurse practitioner licensed under chapter 18.79 RCW; and
    - ii. Has been diagnosed by the health care professional as having a terminal or debilitating condition.
  - b. Provide valid, signed and dated documentation by a health care professional, licensed in Washington State, stating that the person has, in the healthcare professional's opinion, a terminal or debilitating condition that may benefit from the use of medical marijuana.
  - c. The "qualifying patient's" copy of the valid documentation must be retained by the individual, be easily accessible, and presented to facility staff and other appropriate authorities upon request.
  - d. The "qualifying patient" will identify a "designated provider", not affiliated with the long term care community, who will be responsible for providing the medical marijuana to the "qualifying patient". There shall be only one designated provider for each qualifying patient, and the designated provider cannot assist more than one qualifying patient.
  - e. The designated provider is responsible for bringing the medical marijuana to the qualifying patient and promptly removing the medical marijuana from the premises after client consumption.
    - i. Upon arriving at the building, the designated provider must sign in at the front desk, including name, date, and time of arrival.
    - ii. Just prior to leaving the building, the provider must sign out at the front desk, including name, date, and time of departure.

# Policy and Procedure Considerations

- Develop a notification procedure when marijuana is brought to facility by primary caregiver
- Storage, access and use of marijuana by resident “overseen” by facility although probably safest not to allow staff to be in possession of the marijuana
- DOH currently ‘considering’ how to develop regulations for Medical Marijuana in SNF’s. Stay tuned...

# Policies and Procedure Considerations

- Limit use to resident's room (edibles)
  - Rights of roommate?
- Storage
  - Locked box
  - Limited to amount one can possess legally
- Will facility administration have access?

# 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.”
- What happens when State and local laws and professional standards permit medical marijuana but Federal law does not?
- How can physicians/SNFs reconcile the disconnect?
- 42 C.F.R. § 483.10 Resident rights, including right of accommodation of needs, freedom of choice, and self-administration of medications.

# Related Concerns

- Can physicians, nurses, therapists, other care givers use medical marijuana if prescribed by their physician and in accord with State law?
- Does it make a difference if the use, in conformity with a physician's Rx is off premises and on the employee's own time?
- Can a physician, NP, PA, nurse or other employee be terminated for using medical marijuana – even if prescribed and the use conforms to State law?

# Recommendations

- Consult State LTC Ombudsman
- Consult State survey agency
- Consult State Departments of Health and DEA
- Obtain consent from resident, POA or guardian
- Consult competent legal counsel
- Review guidance from professional organizations
- Develop and implement appropriate policies and procedures (revise prn)
- Adopt (and periodically review) appropriate guidelines
- Involve compliance and ethics programs as well as QAPI Committee

# 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!

