

Hickey, Erin

From: CMS ROSFOORA <ROSFOORA@cms.hhs.gov>
Sent: Friday, March 19, 2021 10:49 AM
Subject: Hickey, Erin
Follow Up Flag: RE: Legislative Meeting Request - California Senator Ben Hueso SB 311
Flag Status:

Flag for follow up
Good Morning, Flagged

I apologize for the delay in our response.

CMS and States have received questions from Medicare-participating providers about the impact of marijuana use on their participation in Medicare and Medicaid reimbursement. The Medicare or Medicaid regulations do not address the use of medical marijuana or CBD oil. Surveyors do look at topics such as medication storage, appropriate self-administration of medications, and safe smoking policies, fire safety, etc. – but there is nothing explicitly in the Medicare/Medicaid survey and certification process related to the use of marijuana or CBD oil.

CMS regulations generally require compliance with federal, state, and local laws. CMS would not cite this unless that other body (the authority having jurisdiction-in this case the DOJ) has made an adverse finding.

We are not aware of a provider that has specifically lost funding or been penalized for permitting the use of marijuana or CBD oil; however, there have been citations cited when there has been non-compliance related to the other areas above (fire safety issues in smoking marijuana in a resident/patient room, safe storage, etc.).

Please let us know if you have any questions,

Thank you

From: Hickey, Erin <Erin.Hickey@sen.ca.gov>
Sent: Monday, March 15, 2021 1:55 PM
To: CMS SFCMSFOIA <SFCMSFOIA@cms.hhs.gov>
Subject: Legislative Meeting Request - California Senator Ben Hueso SB 311

Good afternoon,

I work for California State Senator Ben Hueso and am reaching out with a legislative meeting request.

The senator is carrying legislation this year that would require that hospitals and certain types of healthcare facilities in the State of California allow a terminally-ill patient to use medical cannabis for treatment and/or pain relief. The bill number is SB 311 (Hueso): Compassionate Access to Medical Cannabis Act or Ryan's Law: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB311

We recently met with the California Department of Public Health, which previously opposed this bill out of the concern that, as the enforcing agency for CMS, they would be required to cite hospitals that permitted this. The California Hospital Association also has an oppose-unless-amended stance due to a possible risk of losing Medicare/Medicaid reimbursement from CMS.

We were hoping to further discuss with your office to see exactly what the process is like when you receive reports from CDPH and what the enforcement action might be if the report is only detailing that the facility is allowing a terminally-ill patient to access cannabis in a state where it is legal and the patient has a valid prescription (also, the hospital does not have to administer or provide it -- only not interfere with the patient's use). I'm hoping this doesn't result in a loss of funding but, again, we're just trying to better understand the actual risks involved here. This will greatly help as we decide if and how to amend the bill to ensure that hospitals do not lose funding in our attempt to provide compassionate access to those who most need it.

I've attached the fact sheet for your review. You'll notice we have included a safe harbor clause that allows facilities to suspend compliance based on actions from fed agencies including CMS. We would love to discuss that with you, as well, to see if there are ways to strengthen that.

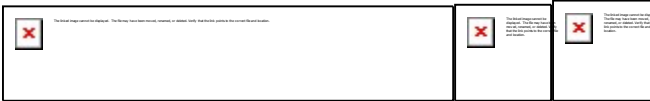
Are there any days in the coming week(s) that might work for our teams to jump on a Zoom meeting?

Thanks so much!

Erin



Erin Hickey
Communications Director
Office of State Senator Ben Hueso, 40th District
Work: 619-409-7690



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