QUESTION:

If your state has legalized marijuana for medical and/or recreational use, we would like more information about the impact on long-term care consumers in your state.

1. How are nursing homes, assisted living, and home care settings dealing with the use of medical marijuana?

2. Have you had any cases involving a resident/consumer using (or wanting to use) medical marijuana? If so, what happened?

3. Are you aware of any specific facilities or companies that are implementing policies, procedures, and practices regarding the use of medical marijuana? If so, please share any detailed information you have regarding their policies, procedures, and practices.

4. Has anyone in your program (state office or local representatives) developed information for residents/consumers regarding the use of medical marijuana and their rights or included it in in-service training for providers?

SUMMARY:

Eleven states responded to this query, Alaska, Colorado, Georgia, Hawaii, Massachusetts, New Mexico, Rhode Island, Texas, Utah, West Virginia, and Wisconsin. In addition to these eleven states, Joe Rodrigues, CA SLTCO shared a response his office received from Region IX of the Centers for Medicare and Medicaid Services.

STATE LTC OMBUDSMAN RESPONSES:

Alaska

Since marijuana is now legal in Alaska, there will be issues in the future. However, there have been no cases in the last year on this issue.

*For more information, contact – Teresa Holt, State Long Term Care Ombudsman, Phone: 907-334-2359, teresa.holt@alaska.gov.*
Medical marijuana use is legal in California and the following response from Region IX Office of General Counsel was shared by Joe in response to this query.

“The Central Office has yet to develop a position on the subject. In the meantime, the Department of Health and Human Services Region IX Office of General Counsel advised the following:

Section 1819(d)(4) of the Social Security Act (42 U.S.C. 1395i-e(d)(4)) provides that “[a] skilled nursing facility must operate and provide services in compliance with all applicable Federal, State, and local laws and regulations . . . .”

Marijuana is a Schedule I controlled substance under the Controlled Substance Act (CSA), 21 U.S.C. 801, 812. This classification renders the manufacture, distribution, or possession of marijuana a criminal offense, CSA sections 841(a)(1), 844(a). In Gonzales v. Raich et al., 545 U.S. 1 (2005), the Supreme Court held that application of CSA provisions criminalizing the manufacture, distribution, or possession of marijuana to instate growers and users for medical purposes (under the California Compassionate Use Act, Cal. Health & Safety Code Ann. Section 11362.5) did not violate the Commerce Clause, i.e., was constitutional. The court also observed that “[t]he Supremacy Clause unambiguously provides that if there is any conflict between federal and state law, federal law shall prevail.”

Given this legal context, we conclude that federal law prohibits a SNF from dispensing medical marijuana. As the court held, “even if respondents are correct that marijuana does have accepted medical uses and thus should be redesignated as a lesser schedule drug, the CSA would still impose controls beyond what is required by California law.” They went on to hold that “the dispensing of new drugs, even when doctors approve their use, must await federal approval.”

In other words, until we get clarification from our Central Office, we cannot approve the dispensing of medical marijuana in federally certified long term care facilities.”

For more information, contact – Joe Rodrigues, CA State Long Term Care Ombudsman, Phone: 916-419-7510, joseph.rodrigues@aging.ca.gov.

Colorado

In Colorado there is no cohesive state-wide policy or practice regarding either medical or recreational marijuana use. In nursing homes it is typical that they do not allow for any marijuana use. The reasoning is that while Colorado Law allows such use, it is illegal federally and tolerating such use would place a facility at risk. It is unclear to the Ombudsman Program of what they are at risk and anecdotally a few
facilities have allowed use in the building, but are not advertising or placing in policies or procedures a formal statement of such practice.

In assisted living facilities some are allowing medical marijuana, with proper official documentation. They seem to only allow self-administration but one policy (of a chain no longer in Colorado) did cite the staff’s ability to dose per physician order.

In practice this seems to mean that people who do use marijuana are then placed in an impossible situation. They cannot use it in their home per facility policy and if they go off-grounds they are breaking a law as Colorado does not permit public consumption.

The use of edibles does help with the discussion of smoking policy being a reason to keep someone from using marijuana and as it does come in “doses” can be more easily monitored. As yet, it is not common practice to take advantage of either opportunity.

It appears that a “don’t ask, don’t tell” practice is developing in Colorado. There is report of family members bringing marijuana to a resident, or taking them out on pass in order to consume marijuana safely. There is also a situation an ombudsman became involved in where a resident was drug tested without his consent and the results were used to issue a discharge. The local ombudsman was able to overturn the discharge, and the resident moved by choice a few months later to a facility that was better suited to his needs.

The first situation brings up the question of adequate clinical monitoring. It would be helpful for facility staff to know this was happening, in case of either positive or adverse effects. Ombudsmen advise facilities to keep an open dialogue with residents so that such information can be shared. And additional question is how to document medical use in a MAR.

Colorado has not developed any training on this issue, but do routinely respond to questions in presentations and in daily work.

For more information, contact – Anne Meier, State Long Term Care Ombudsman, Phone: 1-800-288-1376 ext. 217, ameier@thelegalcenter.org.

Georgia

Medical marijuana is not legal in Georgia.

For more information, contact – Melanie S. McNeil, State Long Term Care Ombudsman, Phone: 404-657-5327, melanie.mcneil@osltcogov.

Hawaii

“Medical” marijuana is now legal in Hawaii but the Department Of Health is still working on the protocols. It is not believed to be happening yet in the LTC facilities. There have been cases involving residents getting busted for using marijuana. Residents and staff have been told that until it’s legal it’s a
crime and they should call the police. Everyone needs to follow the law, and facility staff cannot turn a blind eye and pretend they do not see it or smell it.

For more information, contact – John McDermott, State Long Term Care Ombudsman, Phone: 808-586-0100, john.mcdermott@doh.hawaii.gov.

Massachusetts

Although Massachusetts passed the Medical Marijuana law and issued regulations, things are really moving slowly. The dispensaries are only now opening and beginning to fill orders for those folks determined to be qualified. There are only two open and both in the eastern part of the state. About 24,000 have been determined to be qualified, but it is unclear how many of those are residents of LTC facilities. We have had some residents request to use, but surprisingly few. The facilities and the doctors covering are reluctant citing the fact that it is still illegal under federal law (despite the opinion that the feds are not likely to do anything). There have not been any materials yet regarding its use.

For more information, contact – Mary McKenna, State Long Term Care Ombudsman, Phone: 617-727-7750, mary.e.mckenna@state.ma.us.

New Mexico

New Mexico facilities will not allow medical use as it violates federal law and CMS policy. The only alternative is to transition home. Nobody, state office or local representative, has developed information residents/consumers regarding the use of medical marijuana and their rights or included it in in-service training for providers.

For more information, contact – Sondra Everhart, State Long Term Care Ombudsman, Phone: 505-476-4790, sondra.everhart@state.nm.us.

Rhode Island

Rhode Island has not set up policies for this as the nursing homes and the assisted living are still considered under federal, which still states that the use is illegal. Nursing staff from home care agencies have complained that they want the client to wait until they are not in the home. The staff are afraid the smell from the reefer will get on their clothing and the next client will report them for smoking. Rhode Island has not yet legalized it, but it will probably be on the agenda for the next legislative session. The policy team at the AGS office is looking at rules for using it in the Long Term Care settings. Health is only handling the dispensaries so far.

For more information, contact – Kathy Heren, State Long Term Care Ombudsman, Phone: 401-785-3340, kheren@alliancebltc.org.
Texas

For Texas, this isn’t applicable. No legal status for use of marijuana in Texas.

For more information, contact – Patty Ducayet, State Long Term Care Ombudsman, Phone: 512-438-4356, Patricia.Ducayet@dads.state.tx.us.

Utah

There is no medical marijuana in Utah.

For more information, contact – Daniel Musto, State Long Term Care Ombudsman, Phone: 801-538-3924, dmusto@utah.gov.

West Virginia

West Virginia has not legalized medical marijuana.

For more information, contact – Suzanne E. Messenger, State Long Term Care Ombudsman, Phone: 304-363-1595, suzanne.e.messenger@wv.gov.

Wisconsin

This issue is not present in Wisconsin.

For more information, contact – Heather Bruemmer, State Long Term Care Ombudsman, Phone: 608-246-7014, heather.bruemmer@wisconsin.gov.

ADDITIONAL RESOURCES:


Medical Marijuana Use in LTCFs
Cannabis for Elders: A Precarious State –

Senate Bill 420: Medical Marijuana (Introduced by Senator Vasconcellos) –
http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0401-0450/sb_420_bill_20031012_chaptered.html


Issue: Medical Marijuana – https://www.mpp.org/issues/medical-marijuana/