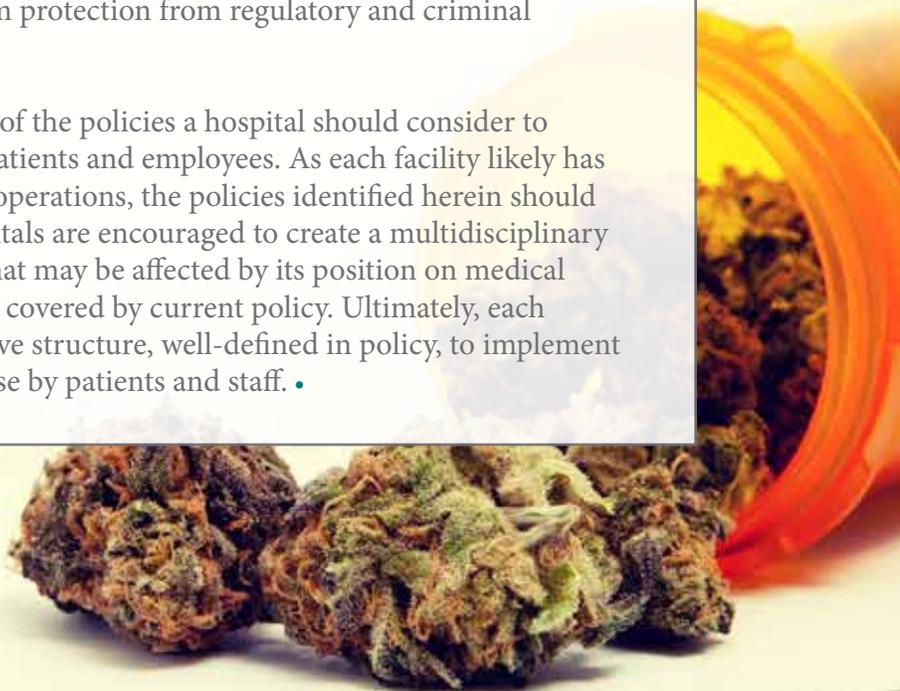


With the advent of medical marijuana in Missouri, hospitals must prepare for patients, visitors and their own staff who obtain identification cards allowing them to use and possess cannabis for qualifying medical conditions. Regardless of an institution's legal or medicinal stance on marijuana, numerous existing policies will be affected by the prohibition or approval of marijuana consumption within the facility, and new policies may be needed to implement the hospital's decisions.

In developing policies around medical marijuana, hospital executives should consider that marijuana remains a Schedule I controlled substance under federal law. Physicians may not prescribe medical marijuana, and a health care provider may not dispense the substance, as the federal Controlled Substances Act prohibits aiding and abetting an individual in acquiring the drug. Under Missouri's new constitutional amendment, ([Mo. Const. Art. XIV, § I](#)), a state-licensed physician certifies a patient as having one or more of the medical conditions listed in the law as qualifying a patient to use medical marijuana. At least one court has determined that discussing the potential benefits of marijuana for certain medical conditions does not violate federal law. *Conant v Walter*, 309 F.3d 629, 636 (9th Cir 2002). However, any hospital intending to permit cannabis use on its premises should consult legal counsel to ensure its policies provide maximum protection from regulatory and criminal sanctions under federal law.

This memorandum addresses some of the policies a hospital should consider to address medical marijuana use by patients and employees. As each facility likely has policies unique to its structure and operations, the policies identified herein should not be considered exhaustive. Hospitals are encouraged to create a multidisciplinary team to assess all existing policies that may be affected by its position on medical marijuana and to identify issues not covered by current policy. Ultimately, each hospital should have a comprehensive structure, well-defined in policy, to implement its position on medical marijuana use by patients and staff. •





POLICIES AFFECTING PATIENTS, PATIENT CARE AND VISITORS

To provide good patient care, health care providers should be aware of all substances regularly used by patients, including illicit drugs and medical marijuana. Legalization of medical marijuana may reduce the stigma of drug use and encourage patients to confide in their providers regarding cannabis use. Inquiring whether a patient is consuming medical marijuana for a qualifying condition will assist health care staff in identifying potential interactions with prescribed drugs or other contraindications associated with a treatment plan. Knowledge of a patient's cannabis use will better inform care. From there, a hospital must determine whether it will allow patients to self-administer their own supply of marijuana during inpatient stays, treat the drug as a continuing home medication or ban use in the facility altogether. Regardless of the decision, numerous considerations arise with respect to policies on patient care.

Medication Policies

The Conditions of Participation require hospitals to have comprehensive medication management policies that ensure safe controls surrounding all medications. Therefore, if a hospital will allow marijuana use by qualifying patients on premises, such use must be addressed in the hospital's **medication administration** policy, including policies for reconciling home

medications. Facilities must develop procedures for verifying that cannabis brought to the hospital was legally purchased (i.e., in packaging demonstrating that it was purchased from a licensed dispensary). If the hospital intends to allow patients to self-administer, the policy will need to address how self-administration will be incorporated into the patient's medication regimen (if at all). The hospital must decide if self-administration by a patient will be documented in his or her medical record.

If the hospital intends to administer medical marijuana as a continuing home medication, the substance will need to be added to that policy. The policy should identify staff authorized to provide marijuana to the patient. Facilities also should be prepared to address situations in which the attending physicians disagree with a patient's primary physician as to the certification of a qualifying medical condition or any recommended dose.

Another consideration to be expressed in policy is the form of cannabis that will be permitted. Under Missouri law, medical marijuana may be used through a variety of means – smoking; vaping; edible or orally ingestible products; and oils, tinctures or ointments. Undoubtedly, hospitals will not permit marijuana to be consumed via smoking or vaping on premises; however, the forms in which it will be permissible should be clearly described.

Under Missouri's medical marijuana law, physicians do not prescribe cannabis, and it may be considered a violation of the federal Controlled Substances Act for medical marijuana to be the subject of a medication **order**. Therefore, a hospital may consider implementing a policy that prohibits marijuana to be the subject of any medication order. If a hospital allows use in the facility, it also should assess how to handle a **stop order** or similar process for ceasing a patient's use of cannabis when appropriate for medical or other reasons, such as the patient's failure to adhere to the facility's rules for marijuana consumption.

Hospitals also should review their medication storage policies. If a hospital allows medical marijuana use

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within the facility, it must determine how the substance will be stored. **Absent approval from the Federal Drug Administration, a hospital should never store marijuana in its pharmacy.** Hospitals that allow patients to bring their own supply of medical marijuana must determine whether the patient will be responsible for storing the drug and, if so, should implement policies to ensure that patients do so safely. The facility also may want to disavow any responsibility for the security of a patient's supply against loss or theft. If the hospital chooses to store the drug on behalf of patients, its policies should outline how it will do so securely and also must address its presence in its medication **inventory** policies, as well as its policies guarding against **drug diversion** by staff. Finally, hospitals should consider how to handle the **disposal** of medical marijuana when necessary, such as when a patient dies or leaves the substance behind.

Intake and Discharge Procedures

Whether a hospital plans to prohibit or allow medical marijuana use within the facility, it should evaluate whether its **intake procedures** accurately capture data on patients' medical marijuana use. Different strains of marijuana have differing effects, so if possible, health care staff may attempt to ascertain the strain a patient most commonly uses to better assess whether the use is inconsistent with or contraindicated by the treatment plan. Intake forms may need to be revised to collect information needed by care team members to assess whether and how the patient's home cannabis use will affect outcomes. Alternatively, a hospital may wish to adopt a "don't ask, don't tell" policy with respect to a patient's status as a medical marijuana user. If use is prohibited during the patient's stay, staff also may consider the impact of any hiatus from marijuana use. Similarly, the facility may want to develop policies for addressing the continuation or resumption of marijuana upon **discharge**, including any contraindications or effect on the patient's recovery time and prognosis.

A hospital also should consider whether its policies restrict inpatient use for certain patient populations, i.e., individuals with substance use disorders, behavioral health conditions or other diseases for which marijuana would be largely contraindicated. Such policies should be based on reasonable medical evidence and crafted with input from medical staff.

Security Policies and Policies on Handling Patient Property

If a facility elects to ban medical marijuana use on premises, it must determine how it will address patients that come to the hospital in lawful possession of marijuana. **Security** policies regarding the removal or storage of contraband or lawful items generally barred from the premises may need to be revised to include medical marijuana. If a patient is unwilling to remove the marijuana during his or her stay, the policy should address whether the facility will dispose of or store the substance. If the hospital intends to store marijuana for patients, staff should be trained

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on how to identify packaging indicating that the marijuana was obtained in compliance with Missouri law. Marijuana that cannot be verified as being obtained from a licensed dispensary should be treated under the hospital's policy on illicit substances. The hospital also should review its policies on **handling patient property** to accommodate holding patient marijuana. Policies should be developed on accounting to patients for the amount of marijuana received and returned, as well as inventory procedures to guard against diversion.

Anti-Smoking Policies

Facilities that allow patients to self-administer medical marijuana or treat it as a continuing home medication should review their policies on **tobacco use** within the facility to ensure they similarly prohibit marijuana consumption by smoking or vaping. •



POLICIES AFFECTING STAFF

Unlike some state's laws, Missouri's medical marijuana law does not include anti-discrimination protections for employees who lawfully use marijuana. It expressly bars use in the workplace and prohibits employees from attempting to work impaired. Nonetheless, the potential use of medical marijuana by hospital employees has implications for the facility's employment policies. Hospitals must be prepared for staff to engage in lawful, off-duty use and determine how such use will affect existing employment policies.

Drug Testing

Most hospitals have policies on drug testing, including random tests to ensure workplace safety, targeted tests in response to workplace accidents or testing in furtherance of drug-free workplace policies. Employees who consume medical marijuana will fail those drug screens in violation of existing controlled substance policies. Because an individual can test positive for marijuana long after using the drug, an employee who fails a drug screen may be engaged in off-duty use only that does not affect their ability to safely perform their job. However, testing for marijuana products in an individual's system does not reliably indicate how recently the substance was consumed. Therefore, each institution will have to evaluate whether and how to address employee use and if it will develop policies contemplating lawful, off-duty consumption.

The policies most directly affected by employee use will be the facility's **drug testing** policies. Thus far, courts in other states are split on whether employers must accommodate off-duty marijuana use. Some have determined that an employer may enforce a "zero tolerance" drug testing policy because marijuana is illegal under federal law. Others have concluded that an employer may be required to exempt medical marijuana users from drug testing policies in certain instances.

For example, a hospital should consider whether to permit off-duty use of marijuana as an accommodation for an employee's disability. The Missouri Human Rights Act may impose considerations for employees who lawfully use marijuana in connection with a disability. The conditions that qualify patients to use marijuana likely would be considered qualifying disabilities under the act, which requires employers to provide reasonable accommodations to employees with a known disability.

The Missouri Human Rights Act requires employers to work with disabled individuals to find a reasonable accommodation that enables the employee to perform the essential functions of the job. It does not require that an employer grant the accommodation requested by the employee – rather, the employer must engage in an interactive process to find an accommodation that works for the employee without placing an unreasonable burden on

the employer. While exemption from drug testing policies need not be listed in a hospital's policy as a reasonable accommodation (accommodations should be based on the unique facts of the particular situation), hospitals should be aware that medical marijuana may factor into decisions made under existing policies for accommodating disabilities.

Other policies that may be implicated by drug testing requirements are those pertaining to **fitness for duty certifications** and **workplace accidents and injuries**. Many employers require drug screening in one or both instances. Nothing in the text of the new medical marijuana law requires an employer to alter their existing policies; however, hospitals should review such policies and make an informed decision to maintain them or to develop exceptions for employees lawfully using medical marijuana. Alternatively, hospitals could wait to see whether Missouri courts weigh in and require exceptions for employees in these circumstances.

It is unlikely that hospitals will be required to revise their **Family Medical Leave Act policies** to accommodate medical marijuana use. While a qualifying medical condition under

FMLA also may constitute a qualifying condition to use medical marijuana, federal courts are unlikely to require an employer to provide leave to use medical marijuana since the substance remains illegal under federal law.

Facilities that elect to make exceptions to their drug testing policies must develop procedures for verifying an employee's status as a lawful medical marijuana user. Policies should specifically describe the circumstances under which an employee may be excused from a positive screen for cannabis. While existing policies likely prohibit impairment from alcohol or drugs while at work, hospitals may wish to revise those policies to expressly state that marijuana use and possession at work is prohibited, and that staff may not present for work under the influence. Managers and supervisors also may need initial and annual training on how to identify the signs of impairment. A hospital also may elect to differentiate how it handles positive drug screens for individuals in safety-sensitive positions.

Physician Certification of Patients With Qualifying Medical Conditions

Hospitals will need to determine whether employed physicians may certify patients with qualifying medical conditions. Some facilities may elect to prohibit their employed physicians from patient certifications, which should be expressed in policy. Those institutions that allow physicians to certify their patients may wish to limit the conditions for which patients may be certified. Policies also may be needed to address whether patients should be transferred to another practitioner if the treating physician disagrees with the patient's certification status or decision to use medical marijuana. •

Policies should specifically describe the circumstances under which an employee may be excused from a positive screen for cannabis.



POLICY DEVELOPMENT

Medical marijuana will impact a vast array of hospital policies and procedures, regardless of whether a facility elects to prohibit or allow inpatient use. Again, hospitals are encouraged to create a multidisciplinary workgroup to assess and address the issues that are likely to arise and to develop a comprehensive and cohesive strategy across all facets of the organization. Once a strategy has been developed, the team can begin to review existing policies to identify those that need to be revised to accommodate the facility's decisions surrounding medical

marijuana and identify any policy gaps to be resolved. Human resources, medical, security, legal and compliance staff all should be part of the team to ensure a thorough approach. Once policies have been developed, staff training should occur to obtain feedback and ensure maximum compliance. Like all policies with regulatory and other legal consequences, policies addressing medical marijuana use should be regularly reviewed to ensure ongoing compliance in what is likely to be a developing area of Missouri law. •

