August 6, 2018

**Q:** Question posed to IDPH – Any progress on information for LTC providers regarding rulemaking or guidance from IDPH on use of medical marijuana?

**A:** Response from IDPH - There is no state rulemaking in progress at the present time for health care facility usage of medical marijuana. The following is the extent of the guidance/information IDPH has received from the [Centers for Medicare & Medicaid (CMS)] with respect to medical marijuana:

To receive Medicare and Medicaid payment, nursing facilities must be in compliance with the federal regulations found in 42 CFR Part 483, Subpart B. [Click here](#) to view those regulations.

The CMS regulations outlining the Requirements for Participation by nursing homes in Medicaid or Medicare do not address the use of medical marijuana. Surveyors do look at medication storage, appropriate self-administration of medications and safe smoking policies when they survey a facility – but there is nothing explicitly in the Medicare/Medicaid survey and certification process related to the use of medical marijuana.

There is a section of the CMS regulations related to compliance with federal, state and local laws §483.70(b)-- “The facility must operate and provide services in compliance with all applicable Federal, State, and local laws, regulations, and codes, and with accepted professional standards and principles that apply to professionals providing services in such a facility.”

However, CMS guidance indicates that CMS would not cite this unless that other body (the authority having jurisdiction in this case the Department of Justice) has made an adverse finding.

CMS is not aware of a facility that has specifically lost funding or been penalized for permitting the use of medical marijuana; 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 room, safe storage, etc.).

Should a facility be found out of compliance with these regulations, CMS can take enforcement action.

Lastly, under federal law, marijuana is still considered a Schedule I substance and it is illegal to use, possess, cultivate, or distribute. While each state has its own marijuana laws, they cannot overturn or preempt federal law.

Any additional CMS guidance received will be forwarded when received.