NARR Policy Guide on Medical Cannabis

The Maine Association of Recovery Residences, a NARR Affiliate, requested NARR's guidance regarding how state affiliates respond to recovery residences that would like to allow medical use of cannabis within their recovery residence and be certified as demonstrating the National Quality Standards as set by NARR. This document provides a response to the Maine Association of Recovery Residences.

Other NARR state affiliates may use this policy guide as they engage in discussions and decision-making regarding acceptable use of medical cannabis in certified recovery residences within their state. No NARR state affiliate is required to allow the use of medical cannabis within recovery residences certified by the affiliate. Each NARR state affiliate has the authority to decide whether to allow or not allow the use of medical cannabis within the recovery residence milieu.

Because the legal landscape concerning medical cannabis varies widely across states, each NARR state affiliate has the authority to examine federal, state and local laws to make appropriate determinations regarding certification of recovery residences that allow the use of medical cannabis within the residence. Nothing in this policy guide shall be construed to require a NARR state affiliate to allow the medical use of cannabis within its certified recovery residences.

Overview

Cannabis is becoming widely available in the United States, with, as of this writing, 33 states allowing its use for medical purposes. Numerous forms of cannabis are available including combustible flowers, edibles, pills, transdermal patches, lotions and oils for vaping. The medical value of various components in cannabis has been shown for wasting illnesses, appetite stimulation, and seizure disorders (Dravit's syndrome and Lennox-Gastaut syndrome).
See:https://www.samhsa.gov/sites/default/files/samhsas-15th-annual-prevention-day-afternoon-plenary-recording-508-031119.pdf.

In addition, conditions that qualify for legal medical use of cannabis in various states include, but are not necessarily limited to: chronic intractable pain (GA, IL, LA, ME, MI, MO, NH, NY, CT, NJ), post traumatic stress syndrome (CO, IL, LA, ME, MO, MN, NH, NJ ,NY, UT, VT), migraines (CT, NJ), autism\autism spectrum disorder (CO, LA, MI, MN, UT), arthritis (C, HI, MI), anxiety (NJ), Tourette's syndrome (MI, MO, NJ), obstructive sleep apnea (MN) and lupus (HI). Medical cannabis is also included as an alternate/substitute for prescription opioids and/or opioid abuse and addiction treatment (CO, IL, NJ, NY, PA, UT,OH, HI, MY, NH, NM, ND, OH, RI). *See:*
https://www.samhsa.gov/sites/default/files/meeting/documents/emerging-issues-marijuana-legalization-06112019.pdf.

Tension between state and federal law concerning medical cannabis

Despite the legalization of medical cannabis by the majority of the states, it remains a Schedule 1 substance under the Federal Controlled Substances Act *See 21 U.S.C Chapter 13, Section 801 et.seq.* Nonetheless, the federal government has never alleged in court that federal laws preempt state laws providing for medical marijuana. Since 2014, Congress has approved riders to the annual Justice Department appropriations bill that prohibits federal funds from being used to interfere with state implementations of medical marijuana laws. See: Consolidated and Further Continuing Appropriations Act of 2015, Section 538, Pub. L. 113-235, 128 Stat. 2130 (2014) and *U.S. v. Marin Alliance for Medical Marijuana*, No. C 98-00086 CRB, decided October 19, 2015. The rider also prevents the federal prosecution of individuals complying with state medical marijuana laws. This non-interference policy except in cases where a specific federal interest is implicated, was formalized in 2013. See: https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf. As the number of states legalizing various forms of cannabis increases , federal policy will likely change.

However, until and unless the federal government removes cannabis from the list of Schedule 1 substances, cannabis use in a RR would result in the loss of the protections afforded residents and RR under the Americans with Disabilities Act (ADA) and the Federal Fair Housing Laws (FFHA). See: *James v. City of Costa Mesa, 700 F. 3d 394, (9th Cir.)(2012).* James's court held that, although it sympathized with the plaintiff, the ADA defines illegal drug use by reference to federal, not state law. Therefore, medical cannabis use negates the protection afforded by the ADA. All subsequent cases construing the James decision have confirmed that the ADA defines "illegal drug use" by reference to federal law, and not state law, and that cannabis use permitted by state law constitutes an illegal use of drugs for the purposes of the ADA. See: *State v. Hutchings, 132 Ohio St. 3rd 1424 (2012); Zarazua v. Ricketts, U.S. District Court, D. Nebraska (2017); U.S. v. Robinson, US District Court, W.D. , Louisiana (2010); Eccleston v. The City of Waterbury, US District Court, Conn. (2021); Steele v. Stallion Rockies, Ltd, 106 F. Supp. 3d. 1205 (D. Colo. 2015); and Forrest City Residential Mgmt. v. Beasley, 71 F. Supp. 3d 715, (E.D. Mich. 2014)*.

In addition to the loss of ADA and Federal Fair Housing Act protection, the use of cannabis by people in recovery from substance use disorders is controversial. Cannabis use may benefit some people and harm others. As a statement of general principle, cannabis use without a legal recommendation and supervision of an approved health care provider by persons in a RR is managed like the use of alcohol and illicit substances.

Limitations on use of medical cannabis in a RR setting

NARR recognizes that an absolute ban on medical cannabis could prevent the appropriate use of cannabis. Accordingly, the NARR Board adopts the following

principles for consideration by a NARR Affiliate in determining appropriate processes for reviewing homes for certification.

1. All RR residents using medical cannabis must possess a current medical marijuana/cannabis card issued by a licensed medical practitioner.

2. Only edible, pill, transdermal patch and tincture formulations of cannabis are permitted. Combustible cannabis products are not permitted.

3. Medical cannabis products must be kept under secure (lockbox) storage conditions. There also needs to be appropriate monitoring of the products, based on the Level of support within the home. The home needs to have established procedures to ensure that the products are only used by the person with the legal medical recommendation and in the amounts recommended. These processes may include:

a. Product inventory;
b. Observed self-dispensing; and
c. Random product counts.

Evidence of a RR resident's use of medical cannabis to "get high" rather than "get well" constitutes grounds for dismissal from the RR. The policies and practices listed above are effective ways that the recovery residence can demonstrate that such products are being used appropriately.

4. The use of prescribed medication, including medically recommended cannabis, must not interfere with established and agreed upon recovery activities. If cannabis use interferes with recovery progress it needs to be addressed with the resident and the health care provider that made the recommendation. Subsequently, a referral to a more appropriate situation may be warranted.

5. Residents using medical cannabis must sign appropriate Consent to Release(s) of Confidential Information (42 CFR Part 2) authorizing communications between the RR operator and the medical provider making the recommendation .

6. The RR policy and associated resident materials on medications must include a statement specific to medical cannabis.

7. All prospective residents must be informed of the medical cannabis policy before admission to the RR.

Conclusion

As evidence about the risks and benefits of medical cannabis accumulates and as changes to state and federal laws concerning its use evolve, the Standards Board may revisit this issue. Dr. Ron Springel, M.D., is acknowledged for his assistance in informing this matter.

The foregoing Medical Cannabis NARR Policy Guide was adopted this 15th day of July, 2021 by vote of the NARR Standards Board.

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Beth Fisher Sanders,
Standards Board Chair