

California State Senate

SENATOR
BEN HUESO

FORTIETH SENATE DISTRICT



July 29, 2021

Xavier Becerra, Secretary
U.S. Department of Health and Human Services

Chiquita Brooks-LaSure, Administrator
Centers for Medicare and Medicaid Services

VIA E-MAIL

Dear Secretary Becerra and Administrator Brooks-LaSure,

I am writing to respectfully request a meeting to discuss my legislation, SB 311 (Hueso): Compassionate Access to Medical Cannabis Act, or Ryan's Law, and how your offices may be able to assist our efforts.

Ryan's Law 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. Currently, whether or not medical cannabis is permitted is left up to hospital policy, and this creates issues for patients and their families who seek alternative, more natural medication options in their final days.

As you know, while cannabis is allowed both medically and recreationally in California, it remains a Schedule I drug at the federal level. Healthcare facilities that are Medicare and/or Medicaid providers receive accreditation from CMS and are required generally to comply with local, state and federal laws in order to continue receiving reimbursements. Consequently, many healthcare facilities have adopted policies prohibiting cannabis on their grounds out of a perceived risk of losing federal funding if they were to allow it.

I carried a nearly identical version of Ryan's Law in 2019 (SB 305, Hueso 2019), which was ultimately vetoed by Governor Gavin Newsom due to a fear that facilities might lose federal CMS funding if they were to comply. However, a couple months ago we received written confirmation from CMS, attached hereto, that the Medicare and Medicaid regulations do not address the use of medical cannabis, and CMS states that it is not aware of a provider that has specifically lost funding or been penalized for permitting the use of medical cannabis.

Furthermore, CMS states it would not cite healthcare facilities for allowing medical cannabis use unless the U.S. Department of Justice (U.S. DOJ) has made an adverse finding. Currently, the U.S. DOJ is prohibited to use any federal funds to interfere with state medical cannabis laws, and our bill also includes a strong safe harbor clause that would allow facilities to suspend compliance should any federal agency initiate an enforcement action or indicate its interest in once again enforcing federal cannabis laws. Therefore, we believe the risk of federal intervention is little to none.

This confirmation from CMS been quite a breakthrough and we are optimistic it will alleviate the Governor's concerns. However, I want to underscore that, prior to receiving this response, even the Governor of California was under the impression that CMS rules prohibited hospitals and healthcare facilities from allowing medical cannabis use. Similarly, the California Department of Public Health, which is the state's enforcing agency for CMS, has also been operating under this incorrect assumption. Undoubtedly other states are struggling with this issue, too. As more states decriminalize cannabis and even create recreational markets, we must not forget to also update the books for the most important consumers of all – patients.

While ideally the federal government will remove cannabis from its Schedule I designation, I appreciate that this is a lengthy and complex process. In the interim, it would be extremely helpful if you could provide clarification that assures Medicare/Medicaid providers that they will not lose reimbursements for allowing medical cannabis use on their premises. This clarification would go a long way to help hospital staff, security, above all, patients.

Sincerely,



Ben Hueso
Senator, 40th District

Cc:

Sean McCluskie, Chief of Staff, HHS
Anne Reid, Deputy Chief of Staff, HHS
Marvin Figueroa, Director, Intergovernmental and External Affairs, HHS
Jonathan Blum, Principal Deputy Administrator & Chief Operating Officer, CMS
Erin Richardson, Chief of Staff, CMS
Karen Jackson, Deputy Chief Operating Officer, CMS
Jeff Wu, Principal Deputy Administrator for Policy and Operations, CMS
U.S. Senator Chuck Schumer, Majority Leader
U.S. Senator Cory Booker
U.S. Senator Dianne Feinstein
U.S. Senator Patty Murray, Chair, Senate Health, Education, Labor & Pensions Committee

U.S. Senator Alex Padilla
U.S. Senator Ron Wyden
U.S. House Speaker Nancy Pelosi
U.S. Rep. Earl Blumenauer
U.S. Rep. Lloyd Doggett, Chair, Committee on Ways and Means Subcommittee on Health
U.S. Rep. Sara Jacobs
U.S. Rep. Ed Perlmutter
U.S. Rep. Juan Vargas
Rahul Gupta, Director, Office of National Drug Control Policy
Tam M. Ma, Deputy Legislative Secretary, Office of Governor Gavin Newsom
Monica Wagoner, California Department of Public Health
Nicole Elliott, Director, California Department of Cannabis Control

Hickey, Erin

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

Follow Up Flag: Flag for follow up
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Good Morning,

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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