

**Questions and Answers on Self-Administration of Medical Marijuana (MM) Products In
General Hospitals**

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NYS Department of Health
Bureau of Narcotic Enforcement
Division of Hospitals and Diagnostic & Treatment Centers**

1. The following questions and answers are related to this patient scenario:

A practitioner responsible for the care of the patient in the hospital has issued an order permitting self-administration of the medication the patient brought into the hospital, in this case Medical Marijuana (MM). The patient/caregiver presents his MM registry ID card.

- a. What happens when the patient/caregiver refuses to or does not present a card?

Anyone possessing MM must have their NYS Medical Marijuana Program registry identification card in their possession when they are carrying the MM. Thus, a hospital may refuse to permit self-administration unless the card is presented. This process should be delineated in the policy and procedures for the self-administration of MM.

- b. Is there any obligation or concern that the hospital should be verifying the authenticity of the card? Or caregiver?

The hospital's policy and procedures should outline the process for acceptance of medical marijuana for self-administration. This may include examining the card for the name, DOB, picture, etc. to assess its integrity to assure, to the extent possible, the authenticity of the card. There is no specific requirement that the hospital needs to verify the card with the state MM program. A treating practitioner, or the practitioner's designee, may access the Prescription Monitoring Program (PMP) to verify a patient has been dispensed MM pursuant to a valid patient registration.

- c. Is there any system or list that the hospital can and/or should consult to verify the ID card?

No.

- d. Can you provide an example of an ID card and what the hospital should be looking for?

See attached.

- e. Does the physician ordering the self-administration of MM in the hospital need to have authorization to prescribe MM?

No prescriber is authorized to prescribe MM. Instead, practitioners who are registered with the Medical Marijuana Program issue certifications to patients for MM.

The physician ordering the self-administration of MM in the hospital does not need to be the certifying practitioner.

2. How does the hospital staff assess the capacity of the patient or the patient's caregiver to self-administer MM and any other medication?

CFR Section 482.23(c)(6)(i) requires a documented nursing assessment of the capacity of the patient or the caregiver to self-administer medications by a registered professional nurse. Nurses are expected to exercise their clinical judgment and to inform the practitioner responsible for the care of the patient about any reservations the nurse might have about an individual patient's (or caregiver/support person's) capacity to safely self-administer medications.

The assessment must be documented and must highlight affirmative findings – i.e., support patient-self-administration – and negative findings – i.e., call into question patient self-administration. The nurse is also expected to document any discussions with the practitioner responsible for the care of the patient regarding the nurses' concerns about patient's (or caregiver/support person's) capacity to safely self-administer medications. Hospitals may, as a matter of policy, permit a nurse to return to nurse administration doses of a medication for which there is a self-administration order. This may occur without a discussion with the responsible practitioner if, based on the nurse's assessment, the patient's capacity has been temporarily diminished and there is no caregiver/support person who is assisting the patient with self-administration of medication.

A determination is also made concerning whether the patient or the patient's caregiver needs instruction on the safe and accurate administration of the medication. This all should be outlined in the policy and procedures.

3. How do hospital staff identify and visually evaluate MM for integrity?

The hospital's policy and procedures should outline that only MM which is properly labeled may be self-administered.

The label of the MM should provide all the information one would find on prescription medication labels. A properly labeled product must include:

- The name and address of the registered organization that dispensed the product;
- The registry identification number of the certified patient and/or designated caregiver;
- Any recommendation or limitation by the practitioner as to the form or forms of medical marijuana or dosage for the certified patient;
- The form and quantity of medical marijuana dispensed;
- The expiration date; and

- The amount of individual dose contained within.

4. How do hospital staff ensure the security of MM?

The MM may remain in the possession of the patient and caregiver. If the patient intends to keep the MM on site at the hospital, the MM must be stored in a locked compartment, which may be located in the patient's room. The hospital may become a designated caregiver facility in accordance with recently issued emergency regulations, NYCRR Sections 1004.3, 1004.4, 1004.22 and 1004.23. When this occurs the hospital may possess, secure and administer the MM to the patient.

There is more information on becoming a designated caregiver facility in question 10 and the link to the Medical Marijuana Program's designated caregiver information page: https://health.ny.gov/regulations/medical_marijuana/caregiver/

5. What if the patient is incapacitated and there is no caregiver, or the caregiver is temporarily unavailable? Where does the hospital store the product?

The hospital should develop its own policy and procedures to address patient incapacitation. If a patient becomes incapacitated, his or her ability to self-administer should be re-assessed, and the product should be securely stored until the patient regains capacity, a caregiver is available to reclaim the MM, or law enforcement can take possession. The MM must be stored in a locked compartment, which may be in the patient's room. Alternatively, the hospital may become a designated caregiver facility as outlined in #5, above.

6. When MM is self-administered or administered by the designated caregiver facility, what documentation is needed?

In accordance with the CMS State Operations Manual, CFR Section 482.23(c)(6)(i), the following is required for self-administration of any medication, including MM.

“Under the regulation, a nurse must document the self-administration of a medication. In cases where the nurse directly supervised the self-administration, the nurse is expected to indicate that the medication administration was observed and confirmed. On the other hand, where direct nurse supervision is not required, the nurse is required to document only what the patient, or the patient's caregiver/support person, reports to the nurse as to the time and amount of medication administered. Nurses are expected to assess whether the reports of the patient or patient's caregiver/support person indicate, with respect to timing and dosage, that the patient is receiving the medication as ordered. “

7. If a patient, who is a certified MM user, dies in the hospital, what happens to the MM?

Title 10 NYCRR 405.5 gives the hospital flexibility to return the MM to the patient's designated caregiver who possesses a MM identification card or to appropriate law enforcement for destruction or disposal. In addition, if a hospital is a designated caregiver facility in accordance with NYCRR Section 1004, the hospital may destroy or dispose of the MM per their hospital policy.

8. Can the Department's Bureau of Narcotic Enforcement (BNE) pick up and dispose of MM in the event of a patient's death?

No. BNE recommends that hospitals establish a relationship with their local law enforcement agency to facilitate such interactions. Alternatively, if a hospital is a designated caregiver facility in accordance NYCRR Section 1004, they may dispose of the MM per their hospital policy.

9. What is the difference between the Part 405.5(c) regulations which permit self-administration of MM in hospitals, and the recently issued emergency regulations which permit hospitals to become designated caregiver facilities within the Medical Marijuana Program?

The Part 405.5(c) regulations authorize hospitals to create policies and procedures to allow for the self-administration of medications, including medical marijuana. The recently issued emergency regulations (10 NYCRR Sections 1004.3, 1004.4, 1004.22 and 1004.23) allow general hospitals the option of becoming designated caregivers for certified patients. After registering with the Department's Medical Marijuana Program, a designated caregiver facility would be authorized to possess, acquire, deliver, transfer, transport, and administer and dispose of medical marihuana on behalf of a certified patient. For additional information about becoming a designated caregiver facility, please visit:

https://www.health.ny.gov/regulations/medical_marijuana/caregiver/

https://www.health.ny.gov/regulations/medical_marijuana/docs/2017-12_regulatory_amendments.pdf

10. Is vaping of MM allowed in hospitals?

No. On October 23, 2017, Governor Cuomo signed legislation amending PHL Section 1399-n (The Clean Indoor Air Act) to prohibit vaping in general hospitals.