Guidance For Health Care Organizations On The New Cannabis Regulations

August 26, 2016

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The following bulletin highlights some of the legislation's key implications for health care organizations.

On August 24, 2016, the *Access to Cannabis for Medical Purposes Regulations* (ACMPR) came into force, replacing the *Marihuana for Medical Purposes Regulations* (MMPR), which formerly regulated the medical use of dried marihuana. Please see BLG's *New Medical Marihuana Regulations Send the MMPR Up in Smoke* bulletin for further general information. The following bulletin highlights some of the legislation's key implications for health care organizations.

What's new?

The principal change in the legislation and the main reason for the ACMPR's genesis is to allow individuals who have been authorized by their health care practitioner to access cannabis for medical purposes, better access by permitting them to grow a limited amount of cannabis for their own medical purposes, or designate someone to produce it for them. The regulations are a response to the Federal Court of Canada's decision in *Allard v. Canada*, in which the Court struck down the MMPR because it infringed the rights of medical marihuana consumers to grow their own cannabis.

In addition, the regulations now regulate the medical use of fresh marihuana and cannabis oil. Previously, dried marihuana was distinguished from other forms of cannabis. Dried marihuana was regulated under the MMPR, whereas fresh marihuana and cannabis oil were regulated under the section 56 class exemptions of the *Controlled Drugs and Substances Act*.

Although the role of health care organizations is unchanged by the introduction of the ACMPR, it is important to understand what was permissible under the MMPR and continues to be permissible through the ACMPR.

Possession

Hospital employees and health care practitioners, including physicians and nurse practitioners, may possess fresh or dried marihuana or cannabis oil if possession is for the practice of their profession or for the purposes and in connection with their employment.1

Sale to a Hospital

A licensed producer may sell or provide fresh or dried marihuana or cannabis oil to a hospital employee, if the possession of the substance is for the purposes of and in connection with their employment.2 The licensed producer must first receive a written order, in accordance with specifications prescribed in the regulations,3 that has been provided by a pharmacist practising in the hospital or a health care practitioner authorized to place orders for that substance on behalf of the hospital.4

Use and Administration in Hospital

Previously, under the *Narcotic Control Regulations,* the person in charge of a hospital could permit dried marihuana received from a licensed producer to be administered to a person under treatment as an in-patient or out-patient of the hospital or to be sold or provided to that person on receipt of a prescription, a written order or a cannabis medical document signed and dated by a health care practitioner.5 The ACMPR has broadened this permission to include fresh marihuana and cannabis oil along with dried marihuana.

The language of the act is permissive, not mandatory. As such, it is up to each hospital to determine whether or not the hospital will permit the sale, provision or administration of cannabis to patients. In determining whether to do so, hospitals must consider the therapeutic benefit and medical needs of their patients that require cannabis as well as the health needs of other patients and staff. Depending on how the marihuana is consumed, for example through smoking or vaping, there may be second hand smoke concerns. This is important to keep in mind from an occupational health and safety perspective given that staff are entitled to refuse to work in an unsafe/unhealthy environment and, depending on the medical position regarding second hand smoke, hospitals may have to consider accommodating staff who do not wish to be exposed to second hand smoke.

Although the language is currently permissive, given the shifting legal landscape surrounding cannabis and the Charter challenges commenced in this area, it is possible that we may see a push towards greater acceptance of cannabis in hospitals.

Recommendations

Before engaging in the purchase, sale, administration, provision and destruction of all forms of cannabis, health care organizations should ensure that they are complying with all of the requirements detailed in the ACMPR and the NCR. They should create policies for proper dealings with cannabis to ensure compliance.

Health care organizations should also ensure that they keep up to date with legislative and regulatory changes in this area. Health Canada has advised that the ACMPR should not be interpreted as being the longer-term plan for the regulation of access to cannabis for medical purposes.

1 *Access to Cannabis for Medical Purposes Regulations* (ACMPR) at s. 3(2)(b)(c).

2 ACMPR at s. 22(4) (a).

3 ACMPR at s. 149(3).

4 ACMPR at s. 149 (2).

5 *Narcotic Control Regulations* s. 65 (2.1)

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