

CUMMA Confusion: A New Federal Rule May Create A Conflict With New Jersey's Medical Marijuana Program - NJBIZ

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The New Jersey Supreme Court's decision in *Wild v. Carriage Funeral Home* in March brought national attention to the broad employment-related anti-discrimination provisions of the Jake Honig Compassionate Use Medical Marijuana Act (CUMMA). However, there is another provision of the CUMMA that likely will generate national attention over the conflicts between state and federal marijuana laws and rules.

In very broad and unqualified language, the CUMMA prohibits denying medical care solely because a patient is an authorized medical marijuana patient.

The CUMMA expressly provides that “[f]or the purposes of medical care ... a qualifying patient's authorized use of medical cannabis ... shall be considered equivalent to the authorized use of any other medication used at the direction of a health care practitioner, and shall not constitute the use of an illicit substance or otherwise disqualify a qualifying patient from needed medical care.” Based on that broad protection, under New Jersey law, a medical provider cannot refuse to provide care on the basis that the patient is an authorized medical marijuana user.

One court in New Jersey has enforced that provision to compel a mental health treatment provider to continue providing medical treatment. In the case of *L.G. v. High Focus Centers*, after the defendant informed the patient that it would stop providing intensive outpatient mental health treatments for his anxiety, depression and suicidal thoughts because he had obtained his medical marijuana card,

the Morris County Chancery court, relying on the clear protection in the CUMMA, issued an emergent temporary order compelling the facility to continue to provide the life sustaining treatments.

That case was resolved by the parties soon after it was started, but it potentially raises a significant conflict between the CUMMA and a recent pronouncement by a federal agency.

At the end of last year, the Federal Substance Abuse and Mental Health Services Agency (SAMHSA), which oversees the distribution of federal funds to treat substance abuse and mental health disorders, began requiring that all grant recipients certify that all programs receiving SAMHSA funds comply with the following statement:

“SAMHSA grant funds may not be used to [...] [d]irectly or indirectly, purchase, prescribe, or provide marijuana or treatment using marijuana. Treatment in this context includes the treatment of opioid use disorder. Grant funds also cannot be provided to any individual who or organization that provides or permits marijuana use for the purposes of treating substance use or mental disorders.”

The “permits marijuana use” language in the certification potentially makes that requirement extraordinarily broad and confusing. For example, arguably a SAMHSA-funded program could continue treating a patient who is using medical marijuana “for the purpose of treating” chronic pain but could not continue treating a similarly situated patient who is using medical marijuana “for the purpose of treating” anxiety.

In response to requests for clarification of that new requirement, SAMHSA has advised some medical facilities that if medical marijuana patients are willing to work to understand the risks of marijuana use and to transition to other treatments, they can continue to be treated in SAMHSA funded programs. However, according to SAMHSA, if the patient is adamant about continuing to use medical marijuana, they should be transitioned to a non-SAMHSA funded program.

SAMHSA grant funds, either directly or indirectly through federally funded state grants, are provided to many of the substance abuse and mental health facilities and providers throughout New Jersey. With more than one-quarter of the 72,000 New Jersey medical marijuana patients using marijuana to treat anxiety or opioid use disorder, it is only a matter of time before a medical marijuana patient is denied medical care because of this new SAMHSA requirement.

Such a denial would be in direct conflict with the CUMMA, which prohibits denying medical care solely because the patient is a medical marijuana patient. Unlike other provisions of the CUMMA, this anti-discrimination provision does not contain an exception that would allow refusing medical care if the facility would risk losing federal funding. As a result, SAMHSA funded programs will at some point be forced to decide whether to risk violating either the CUMMA or the SAMHSA certification requirement. Ultimately the courts will have to determine whether the SAMHSA certification requirement is invalid for one or more reasons or if this federal requirement can override the state law.