



**Office for People With
Developmental Disabilities**

INFORMATIONAL LETTER

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| Transmittal: | 23-INF-01 |
| To: | Executive Directors of Voluntary Provider Agencies Developmental Disabilities State Operations Offices (DDSOO) Directors Developmental Disabilities Regional Offices (DDRO) Directors |
| Issuing OPWDD Office: | Division of Statewide Services Counsel's Office |
| Date: | July 13, 2023 |
| Subject: | Use of Cannabidiol (CBD) and Synthetic THC Products in Certified Sites, Use of Medical Cannabis in Certified Sites |
| Suggested Distribution: | Agency Administrators and Management Staff Clinical Staff and Clinical Staff Supervisors Quality Improvement Staff |
| Contact: | OPWDD Director of Nursing and Health Services nursingandhealthservices@opwdd.ny.gov |
| Attachments: | |

| Related ADMs/INFs | Releases Cancelled | Regulatory Authority | MHL & Other Statutory Authority | Records Retention |
|------------------------------|-------------------------------|---|--|------------------------------|
| | | 14 NYCRR § 633.17 9 NYCRR Part 113 9 NYCRR Part 114 | CAN §§ 1.3; 3.32; 3.33 | |

Purpose:

This informational letter is to inform all facilities certified or operated by OPWDD of current requirements for the use of Cannabidiol (CBD), synthetic Tetrahydrocannabinol (THC) and other hemp-derived phytocannabinoid products; and/or the use of medical cannabis in OPWDD operated or certified residential and non-residential settings.

Background:

CBD and Other Hemp-derived Phytocannabinoid Products

In November 2021, the New York State Office of Cannabis Management's (OCM) Cannabis Control Board published regulations at 9 NYCRR Part 114 permitting cannabinoid hemp flower products such as CBD and other phytocannabinoid products to be sold to individuals by licensed cannabinoid hemp retailers. It must be noted however, notwithstanding these regulations, the administration by staff of any over-the-counter CBD or other phytocannabinoid products that do not have Food and Drug Administration (FDA) approval is prohibited in OPWDD operated or certified residential and program sites.

Medical Cannabis

In February 2022, OCM published regulations at 9 NYCRR Part 113 amending the previous Department of Health rules governing the certification and administration of medical cannabis, including those cannabis products that contain primarily CBD or other non-psychoactive phytocannabinoids. The current rules permit individuals who are certified by a registered practitioner to receive medical cannabis to designate a facility as their designated caregiver facility, rather than a specific person within a facility, as individuals are typically supported by multiple staff members. The regulations also provide protections for employees of facilities who act within the scope of their employment in accordance with the regulations.

Requirements:

OPWDD recently met with the New York State Education Department (NYSED) Office of the Professions, and OCM, to discuss the topics of CBD, synthetic THC, and medical cannabis use in facilities operated or certified by OPWDD. The following information is intended to provide clarity for their use in both state and voluntary operated certified settings.

Use of CBD or Synthetic THC

Outside of the use of medical cannabis, only four (4) medications that contain CBD or synthetic THC can be administered by nursing staff and Approved Medication Administration Personnel (AMAP) staff. All approved CBD or synthetic THC medications require a prescription in order to be administered.

The following are four (4) medications that contain CBD or synthetic THC that are FDA approved:

- Epidiolex
- Marinol
- Cesamet
- Syndros

Additionally, note that the four (4) FDA-approved medications may only be administered to treat the diagnosed medical conditions for which they are approved. As an example, Epidiolex is FDA-approved for use in individuals with Lennox Gastaut Syndrome, Dravet Syndrome and Tuberous Sclerosis Complex and may not be administered by OPWDD staff to treat any other diagnosed

conditions.

Pursuant to NYSED policy, the administration by staff of any over-the-counter CBD products not approved by the FDA is prohibited. These non-FDA approved CBD products cannot be administered by Registered Nurses (RNs), Licensed Practical Nurses (LPNs), AMAP staff, or any other staff. This prohibition includes those CBD and other hemp-derived phytocannabinoid products sold or described as dietary supplements. The prohibition applies even when there has been a prescription written by a physician, unless the individual to whom the product is recommended is certified by the physician to receive medical cannabis, and the recommended product is purchased at a dispensing facility operated by a registered organization. A list of registered dispensing facilities can be found at: <https://cannabis.ny.gov/dispensing-facilities>

Use of Medical Cannabis

To administer medical cannabis, a facility must register with OCM to become a designated caregiver facility. Designated caregiver facilities must renew their OCM registrations every two (2) years. Any facility that has previously registered as a caregiver facility with DOH or otherwise acted as a caregiver facility is advised to immediately register with OCM using the new form linked below.

The application form for designated caregiver facility status can be found at: https://cannabis.ny.gov/system/files/documents/2022/01/designated_caregiver_facility_form_0_0.pdf

Note that the definition of “designated caregiver facility” in the Cannabis Law at CAN § 1.3(21) and OCM regulations at 9 NYCRR 113.1(o) includes only OPWDD operated or certified residential facilities, however OCM will also consider applications from OPWDD operated or certified day services facilities (see 14 NYCRR 619.2(d)(7)) under its discretionary authority.

For an individual to designate a facility as their designated caregiver facility, they must first be certified to receive medical cannabis and will have been issued a patient certification and a registry ID through OCM’s Medical Cannabis Data Management System. There is no longer a form that must be completed for an individual to designate a facility as designated caregiver facility. The facility must be registered with OCM as a designated caregiver facility, but no additional OCM documentation is required.

Individuals who do not make their own health care decisions may still be eligible to use medical cannabis and have a designated caregiver, including a designated caregiver facility. However, if such an individual is determined by the registered practitioner to lack capacity to consent to the medical cannabis patient certification, there must be an available party legally authorized to make health care decisions on behalf of that individual, such as a legal guardian with requisite authority, or health care agent. An authorized party who provides consent for a medical cannabis patient certification on behalf of an individual who is determined to lack the requisite capacity may be required to make a statement to the registered practitioner that they are: (a) legally authorized to make health care decisions on behalf of the individual, (b) providing consent on the individual’s behalf to the use of the medical cannabis product(s) and any device used for its administration, and (c) able to identify the designated caregiver for the individual, as applicable.

An individual can have up to five (5) designated individual caregivers, not including designated caregiver facilities or the employees of a designated caregiver facility. If an individual designates an OPWDD residential facility as a designated caregiver facility, that facility does not count towards that individual’s limit of five (5) designated individual caregivers. For example, an individual can have both their mother, father, and three other friends or family members as designated individual caregivers, and can still designate their OPWDD residential facility and/or

day services facility as a designated caregiver facility.

There is no longer a limit to the number of individuals for which a facility can be designated as a designated caregiver facility.

OPWDD requires that if a staff member administers medical cannabis, they must be an AMAP certified staff or a nurse. All staff administering medications, including medical cannabis, must adhere to the rules at 14 NYCRR 633.17. The facility may also determine additional persons who may administer medical cannabis, including non-staff members who have been separately designated as caregivers by an individual (e.g., an individual's family member). If the facility so determines, individuals may also self-administer medical cannabis, even if they also have a designated caregiver.

Staff of designated caregiver facilities may pick up and transport medical cannabis purchased from a registered organization's dispensing facility on behalf of an individual for whom the facility is a designated caregiver facility. The dispensing facility may also deliver the medical cannabis directly to an OPWDD residential facility or day services facility. When picking up or receiving delivery of medical cannabis on behalf of an individual, staff must present the dispensing facility with copies of the individual's patient certification and OCM-issued registry ID. In lieu of staff, another party who has been separately designated as caregiver of an individual may also pick up and transport the medical cannabis to an OPWDD residential facility or day services facility. A list of registered dispensing facilities can be found at: <https://cannabis.ny.gov/dispensing-facilities>

Due to federal limitations, medical cannabis may only be paid for by cash or debit card. State dollars will not pay for this, nor does insurance (including Medicaid or Medicare) cover this cost. It continues to be the responsibility of the individual or their family to pay for medical cannabis.

Facilities must develop and follow internal policies and procedures, in conjunction and in compliance with any entities that may oversee and/or regulate the facility, that provide for storage of approved medical cannabis products in a secure manner so as to prevent diversion. Storage of medical cannabis, as with other controlled substances, must comply with the rules at 14 NYCRR 633.17.