April 16, 2015

The Honorable Jay Inslee
Governor, State of Washington
P.O. Box 40002
Olympia, WA 98504-0002

RE: Senate Bill 5052 – Partial Veto Request

Dear Governor Inslee,

I am writing to request that you ***veto Section 36 of Senate Bill 5052***, the cannabis patient protection act. This section prohibits employers of physicians, including hospitals, medical groups, clinics, nursing homes, and others from implementing standards around how their providers prescribe medical marijuana.

This section was added to the final bill in a striking amendment. It had never been heard in committee or vetted with stakeholders, so we did not have a chance to comment on it during the process. As we surveyed those advocates who had been working closely on the bill, none of them had seen the provision before. Had it come to light earlier in the process, we certainly would have worked on it earlier.

Many medical staff groups have self-imposed rules around the prescribing of medical marijuana, relying on existing medical evidence. For example, hospital medical staffs have enacted policies allowing prescriptions by oncologists and neurologists, but requiring medical group review and approval of prescriptions by pediatricians and psychiatrists. Your Department of Health says on its website, "The Department of Health has received several reports and complaints about healthcare providers inappropriately recommending medical marijuana or not following the requirements established in law." This is an area where achieving widespread adoption of best practice guidelines often requires clear hospital or medical staff oversight. This section would prohibit this good work to ensure the safety and appropriateness of medical marijuana prescribing from continuing.

We have two major concerns about this provision.

First, it runs counter to many other state efforts around health care reform and your goals of advancing best practices and containing costs. Through work such as the Bree Collaborative and the Health Technology Assessment program, as well as ER is for Emergencies and OB Pathway, hospitals and their medical staffs are working to standardize best practices and ensure appropriate care.

Section 36 of SB 5052 allows a provider to prescribe marijuana when "he or she determines within a professional standard of care or in the individual health care professional's medical judgment the qualifying patient may benefit from the medical use of marijuana." However, our

work with you and your agencies has meant that at times, hospitals or their medical staff leadership are requiring practice that is counter to an individual provider's decision making. For example, we worked diligently to prevent early elective inductions in pregnant women. While many physicians embraced the idea in the face of new evidence, others did not and wanted to continue their past practice. As another example, hospital medical staff in concert with your agencies have adopted strict standards around prescribing opiates. Again, medical marijuana is another area where hospital or medical staff oversight is appropriate.

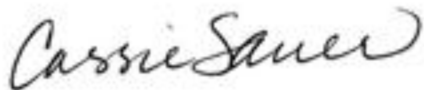
Second, we are concerned about interactions with the federal government. The consumption, production, and distribution of marijuana remains illegal under federal law, and federal enforcement intentions for medical marijuana are unclear. Unlike many other prescribers of medical marijuana, hospitals are heavily regulated by the Drug Enforcement Agency, and have enormous risks from potentially being seen as out of compliance with DEA regulations. The DEA has extensive interactions with hospital pharmacies, for example, overseeing handling and dispensing of controlled substances and prescription drug takeback programs. We are concerned that prohibiting hospitals and medical groups from enacting reasonable policies and safeguards around medical marijuana prescriptions could make hospitals a target for federal enforcement actions.

The federal law's classification of marijuana as illegal has important implications for hospitals. Federally mandated conditions of participation from the Centers for Medicare and Medicaid (CMS) require providers to act "in compliance with applicable Federal laws related to the health and safety of patients." If a provider "no longer meets the appropriate conditions of participation," CMS may terminate the provider's agreement. Because it remains a violation of federal law to possess, manufacture or distribute marijuana, hospitals in violation of the Controlled Substances Act risk termination of their Medicare and Medicaid agreements.

To date, because of the threat of federal enforcement action, hospitals have taken a cautious approach, but have been testing the boundaries of how to best provide access in a way that does not threaten their various forms of federal recognition. This proposal, by being characterized as a mandate on hospitals to allow prescribing without oversight, rather than as permissive authority from the state, puts hospitals in an untenable position with respect to following both state and federal law.

Thank you very much for considering our request.

Sincerely,



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