Date of Hearing: June 8, 2021

ASSEMBLY COMMITTEE ON HEALTH
Jim Wood, Chair
SB 311 (Hueso) – As Amended March 1, 2021

SENATE VOTE: 36-0

SUBJECT: Compassionate Access to Medical Cannabis Act or Ryan's Law.

SUMMARY: Requires specified health care facilities to allow terminally ill patients to use medical cannabis within the facility, subject to certain restrictions. Specifically, **this bill**:

1) Enacts the "Compassionate Access to Medical Cannabis Act," or "Ryan's Law," stating the intent of the Legislature to support the ability of a terminally ill patient to safely use medical cannabis within specified health care facilities in compliance with the Compassionate Use Act of 1996 (CUA).

2) Defines, for purposes of this bill, "health care facility" to mean a licensed general acute care hospital (GACH), special hospital (SH), skilled nursing facility (SNF), congregate living health facility (CLHF), or hospice facility. Excludes from this definition of "health care facility" a chemical dependency recovery hospital or a state hospital.

3) Defines, for purposes of this bill, "terminally ill" to mean a medical condition resulting in a prognosis of life of one year or less, if the disease follows it natural course.

4) Requires a health care facility to do all of the following:
   a) Refrain from interfering or prohibiting a terminally ill patient from using medical cannabis within the health care facility;
   b) Prohibit smoking or vaping as methods to use medical cannabis;
   c) Include the use of medical cannabis within the patient's medical records;
   d) Require a patient to provide a copy of the patient's valid medical marijuana identification card, as specified, or a copy of that patient's written documentation by the patient's attending physician stating that the person has been diagnosed with a serious medical condition and that the medicinal use of cannabis is appropriate; and,
   e) Develop and disseminate written guidelines for the use of medical cannabis within the health care facility pursuant to this bill.

5) Exempts the provisions in 4) above from applying to patients receiving emergency services and care, or to the emergency department of a health care facility while the patient is receiving emergency services and care.

6) Permits a health care facility to reasonably restrict the manner in which a patient stores and uses medical cannabis, including requiring the medical cannabis to be stored in a locked container, to ensure the safety of other patients, guests, and employees of the health care facility, compliance with other state laws, and the safe operations of the health care facility. Permits a health care facility to specify that it is not responsible for lost or stolen medical cannabis. Requires the health care facility to include all restrictions within the written guidelines required to be developed pursuant to this bill.

7) Prohibits this bill from being deemed to require a facility to provide a patient with a recommendation to use medical cannabis or include medical cannabis in a patient's discharge plan.

8) Prohibits this bill from being enforced by the department that licenses the health care facility.

9) Prohibits compliance with this bill from being a condition for obtaining, retaining, or renewing a license as a health care facility.

10) Prohibits this bill from being deemed to reduce, expand, or otherwise modify the laws restricting the cultivation, possession, distribution, or use of cannabis that may be otherwise applicable, including, but not limited to, the Control, Regulate and Tax Adult Use of Marijuana Act.

11) Permits a health care facility to suspend compliance with the provisions of this bill if a federal regulatory agency, the United States Department of Justice, or the federal Centers for Medicare and Medicaid Services (CMS) initiates enforcement action against a health care facility related to the facility's compliance with a state-regulated medical marijuana program, or issues a rule or otherwise provides notification to the health care facility that expressly prohibits the use of medical marijuana in a health facility.

12) Specifies that the ability of a health facility to suspend compliance with this bill pursuant to 11) above does not permit a health care facility to prohibit the use of medical cannabis due solely to the fact that cannabis is a Schedule I drug or other federal constraints on the use of medical marijuana that were in existence prior to the enactment of this bill.

EXISTING LAW:

1) Establishes the California Department of Public Health (DPH), which, among other functions, licenses and regulates various health facilities, including GACHs, SHs, SNFs, CLHFs, and hospice facilities.

2) Establishes the CUA of 1996, also known as Proposition 215, which protects patients and their primary caregivers from criminal prosecution or sanction for obtaining and using marijuana for medical purposes upon the recommendation of a physician. Protects physicians who recommend marijuana to a patient for medical purposes from being punished or denied any right or privilege. States that the purpose of CUA is to ensure that seriously ill Californians have the right to obtain and use marijuana if a physician has determined that the person's health would benefit from its use in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.

3) Enacts various provisions of law by statute to further regulate the CUA, including establishing a voluntary means of getting a medical marijuana identification card, and defining the terms "attending physician," "primary caregiver," and "qualified patient" for purposes of the CUA.

4) Includes in the definition of "primary caregiver," for purposes of the CUA, the owner or operator, or no more than three employees designated by the owner or operator, of the

following facilities, in a case in which a qualified patient or person with a medical marijuana identification card receives medical care or supportive services from one of these facilities: a licensed clinic, a licensed health care facility, certain residential care facilities, a hospice, or a home health agency, as each of these facilities are defined.

5) Enacts the Medicinal and Adult-Use Cannabis Regulation and Safety Act to establish a comprehensive system to control and regulate the cultivation, distribution, transport, storage, manufacturing, processing, and sale of both medicinal cannabis and cannabis products, and adult-use cannabis and cannabis products for adults 21 years of age and over.

6) Prohibits smoking cannabis in a location where smoking tobacco is prohibited. Prohibits smoking or ingesting cannabis products in a public place, except where permitted by a local jurisdiction and as long as cannabis consumption is not visible from any nonage-restricted area.

7) Establishes the End of Life Option Act to permit an adult individual with a terminal disease and who has the capacity to make medical decisions to request a prescription for an aid-in-dying drug, under specified circumstances. Defines "terminal disease," for purposes of the End of Life Option Act, as an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, result in death within six months.

8) Establishes the California Hospice Licensure Act (Act) to ensure the health and safety of patients who, by definition, are experiencing the last phases of life due to the existing of a terminal disease. Defines "terminal disease," for purposes of the Act, as a medical condition resulting in a prognosis of life of one year or less, if the disease follows its natural course.

9) Permits a licensed hospice to provide interdisciplinary hospice services, including palliative care, to a patient with a serious illness, which is defined to mean a condition that may result in death, regardless of the estimated length of the patient's remaining period of life.

10) Defines "palliative care" as a medical treatment, interdisciplinary care, or consultation provided to a patient or family members that has as its primary purpose the prevention of, or relief from, suffering and the enhancement of the quality of life, rather than treatment aimed at investigation and intervention for the purpose of cure or prolongation of life.

FISCAL EFFECT: None

COMMENTS:

1) **PURPOSE OF THIS BILL**. According to the author, this bill would dramatically improve end-of-life treatment and pain relief options for terminally-ill patients receiving care in California healthcare facilities. Despite the state's approval of medical cannabis use for adults and children, and legalized recreational use for adults, Californians are currently unable to access medical cannabis while in an in-patient setting, even if they possess a valid physicians' recommendation. The author states that this discrepancy is most harmful to terminally-ill Californians, who deserve to spend their final days with relief, dignity and compassion. The author concludes that this is a simple, yet critical, step that will have an abundance of benefits for patients and their families, while providing the necessary cover for providers that seek federal reimbursements.

2) **BACKGROUND**. Medical marijuana, also called medical cannabis, can be helpful in treating a variety of conditions. The specific disorders it can legally be used to treat vary from state to state. To date, it appears to be most effective for treating muscle spasms, chronic pain and nausea. The U.S. Food and Drug Administration recently approved a form of medical cannabis to treat severe childhood epilepsy. Marijuana comes from the Cannabis plant. In its leaves and buds are substances called cannabinoids. The plant contains more than 100 cannabinoids, but two are of particular interest for medical purposes: THC (delta-9 tetrahydrocannabinol) and CBD (cannabidiol). THC is the primary mind-altering ingredient in marijuana that makes people "high." CBD does not trigger changes in the brain that lead to a high.

   Possession of marijuana is illegal under federal law in the U.S. However, 30 states and the District of Columbia currently have laws legalizing medical cannabis in some form, California being the first with the passage of Proposition 215 in 1996. As noted in existing law above, Californians have the right to obtain and use marijuana if a physician has determined that the person's health would benefit from its use in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.

   A recent report from the National Academies of Science reviewed and summarized the medical literature published about medical cannabis, specifically examining its effectiveness and safety. It concluded that medical cannabis was particularly effective for easing chronic pain, especially pain caused by nerve damage. It can effectively control nausea and vomiting and is often used to manage those symptoms in people undergoing chemotherapy. Medical cannabis also has been shown to be useful in relieving painful muscles spasms caused by conditions such as multiple sclerosis or spinal cord injuries.

   a) **New York**. In October of 2017, regulations went into effect allowing hospitals, nursing homes and other health facilities in New York to obtain medical cannabis for their patients by allowing these facilities to be registered as "caregivers" for up to five patients. Health facilities are not required to participate, but are allowed to become caregivers to obtain and provide cannabis to their patients. However, this program is very similar to a provision of California law that defines "primary caregiver," for purposes of the CUA, to include the owner or operator of certain types of facilities, or up to three employees designated by the owner or operator of the facilities. Both the New York regulation, and California law, are written to allow a facility to become a "caregiver" of a patient who qualifies for medical cannabis, which provides the caregiver with protection from enforcement of state marijuana laws. What this bill seeks to do, rather than have the facility become the "caregiver," is to instead require the facility to allow the patient to use his or her own cannabis that he or she, or their caregiver such as a family member, brings into the facility with them.

      The Mayo Clinic's hospitals permit use by patients registered with Minnesota's medical marijuana program who come into the hospital with a cannabis product in its original container as dispensed by an approved cannabis patient center.

   b) **Federal marijuana law**. Under federal law, marijuana is classified as a Schedule I substance under the Uniform Controlled Substances Act, where Schedule I substances are considered to have a high potential for dependency and no accepted medical use, which

makes distribution of marijuana a federal offense. In October of 2009, the Obama Administration sent a memo to federal prosecutors encouraging them not to prosecute people who distribute marijuana for medical purposes in accordance with state law. In August of 2013, the US Department of Justice (DOJ) provided an update to its marijuana enforcement policy in the aftermath of Colorado and Washington voting to legalize non-medical use of marijuana. This memo, known as the "Cole Memorandum," stated that while marijuana remains illegal federally, the US DOJ expects states like Colorado and Washington to create "strong, state-based enforcement efforts…and will defer the right to challenge their legalization laws at this time." In January 2018, under the Trump Administration, then U.S. Attorney General Sessions issued a Marijuana Enforcement Memorandum that rescinded the Cole Memorandum, and permitted federal prosecutors to decide how to prioritize enforcement of federal marijuana laws, weighing "all relevant considerations, including federal law enforcement priorities set by the Attorney General, the seriousness of the crime, the deterrent effect of criminal prosecution, and the cumulative impact of particular crimes on the community."

The US DOJ under the new Biden Administration has yet to issue an official memo. However, Congress has passed a law, known as the Rohrabacher-Farr amendment that prohibits the US DOJ from spending funds to interfere with the implementation of state medical cannabis laws.

c) State regulation of medications. Title 22 regulations prohibit drugs from being administered except by licensed personnel authorized to administer drugs and upon the order of a person lawfully authorized to prescribe or furnish the drug. The regulation also prohibits medications from being left at the patient's bedside unless the prescriber so orders, and requires such medications to be kept in a cabinet, drawer, or in possession of the patient. Drugs are not to be left at the bedside which are listed in Schedules II, III and IV of the Federal Comprehensive Drug Abuse Prevention and Control Act. If the hospital permits bedside storage of medications, written policies and procedures must be established for the dispensing, storage and records of use. Medications brought by or with the patient to the hospital are prohibited from being administered to the patient unless all of the following conditions are met:

i) The drugs have been ordered by a person lawfully authorized to give such an order and the order entered in the patient's medical record;
ii) The medication containers are clearly and properly labeled; and,
iii) The contents of the containers have been examined and positively identified, after arrival at the hospital, by the patient's physician or the hospital pharmacist.

California law does not define "medical cannabis" as a medication and it does not require a prescription, so the provisions above do not apply to medical cannabis.

d) State enforcement of federal licensing standards. The DPH Licensing & Certification program (L&C) is responsible for regulatory oversight of licensed health facilities and health care professionals. L&C fulfills this role by conducting periodic inspections and compliant investigations of health facilities to ensure that they comply with federal and state laws and regulations. L&C licenses and certifies over 7,500 health care facilities and agencies in California, such as hospitals and nursing homes, in 30 different licensure and certification categories. The CMS contracts with L&C to evaluate facilities accepting

Medicare and Medicaid (Medi-Cal in California) payments to certify that they meet federal requirements. L&Cs fields operations are implemented through district officers, including over 1,000 positions, throughout the state, and through a contract with Los Angeles County.

DPH opposed the previous version of this bill, SB 305 (Hueso) from 2019, and stated that DPH would have to continue to cite facilities for violations of federal law and regulations, including notifying CMS that a facility is allowing patients to consume schedule I drugs (including cannabis) with a facility. DPH noted that licensed and certified facilities that choose to allow medical cannabis may jeopardize Medicare certification, since federal enforcement actions can include a ban on new admissions, or decertification.

In March of 2021, Senator Hueso reached out to CMS to request a meeting regarding CMS enforcement of medical marijuana use in health facilities and received the following response vial email:

"The Medicare or Medicaid regulations do not address the use of medical marijuana or CBD oil. Surveyors do look at topics such as medication storage, appropriate self administration of medications, and safe smoking policies, fire safety, etc. – but there is nothing explicitly in the Medicare/Medicaid survey and certification process related to the use of marijuana or CBD oil. CMS regulations generally require compliance with federal, state, and local laws. CMS would not cite this unless another body (the authority having jurisdiction-in this case the DOJ) has made an adverse finding. We are not aware of a provider that has specifically lost funding or been penalized for permitting the use of marijuana or CBD oil; however, there have been citations cited when there has been non-compliance related to the other areas above (fire safety issues in smoking marijuana in a resident/patient room, safe storage, etc.)"

DPH has received conflicting guidance from CMS on this issue.

3) **SUPPORT**. The California Cannabis Industry Association (CCIA) supports this bill and states that Cannabis is proven to relieve a number of symptoms related to terminal illnesses including cancer, HIV/AIDS, and a number of other ailments. For many individuals, particularly terminally-ill patients, medicinal cannabis is a preferred alternative to other drugs, as it provides therapeutic relief without many of the caveats that come with other medicines such as opioids. Unfortunately, due to the unique legal nature of cannabis, there is no legal framework for terminally-ill patients to continue to use medical cannabis while in a palliative-care facility. CCIA states that this bill remedies this issue by requiring that certain hospice facilities allow medicinal cannabis to be used by patients on the premises, while providing safeguards that protect these facilities' patient populations and guarantees flexibility in accommodating medicinal cannabis patients. CCIA concludes that this legislation strikes a careful balance between protecting patients' rights and providing facilities that offer palliative care flexibility to accommodate medicinal cannabis users in their premises.

Americans for Safe Access (ASA) supports this bill and notes that pain relief is the most cited reason for therapeutic cannabis use, and that its efficacy can allow the reduction of addictive pain medications, giving the terminally ill the opportunity to enjoy their loved ones

more meaningfully in the last months of life. ASA notes that California was the first state to champion safe access to medical cannabis, and that this bill will ensure that those who are dying have the safe access the voters intended.

4) **OPPOSE UNLESS AMENDED**. The California Hospital Association (CHA) is opposed to this bill unless it is amended. CHA states that they do not oppose the use of medical cannabis, or even necessarily its use in a hospital, as a matter of principle. However, while California has legalized both the medical and recreational use of cannabis, it remains a Schedule I controlled drug (no accepted medical use) and is illegal under federal law. In a veto message on a nearly identical bill in 2019, the Governor noted that "health facilities certified to receive payment from CMS must comply with all federal laws in order to receive federal reimbursement for the services they provide. This bill would create significant conflicts between federal and state law that cannot be taken lightly." And, DPH, the state's enforcing agency for federal certification standards, noted in its letter on the same 2019 bill, "DPH must cite facilities for allowing the use of medical cannabis by any patients."

   CHA states that this bill contains only a limited attempt to protect facilities, which simply does not solve its fundamental conflict with federal law or the risks it presents for the state's hospitals and other providers. For this bill to truly protect hospitals, it would need to be amended to be enforceable only if medical cannabis is excluded from Schedule I of the federal Controlled Substances Act, or if it is approved by the federal Food and Drug Administration and either placed on a schedule of the act other than Schedule I or exempted from one or more provisions of the act.

5) **PREVIOUS LEGISLATION**.

   a) SB 305 (Hueso) of 2019 was nearly identical to this bill, but was vetoed by the Governor. In his veto message, Governor Newsom stated that "It is inconceivable that the federal government continues to regard cannabis as having no medicinal value. The federal government's ludicrous stance puts patients and those who care for them in an unconscionable position. Nonetheless, health facilities certified to receive payment from CMS must comply with all federal laws in order to receive federal reimbursement for the services they provide. This bill would create significant conflicts between federal and state law that cannot be taken lightly. Therefore, I begrudgingly veto this bill."

   b) SB 223 (Hill), Chapter 699, Statutes of 2019, authorizes the governing board of a school district, a county board of education, or the governing body of a charter school maintaining kindergarten or any of grades 1 to 12, to adopt a policy that allows a parent or guardian of a pupil to possess and administer non-smokeable and non-vapeable medicinal cannabis to the authorized pupil at a school site.

   c) SB 94 (Committee on Budget and Fiscal Review), Chapter 27, Statutes of 2017, established a single system of administration for cannabis laws in California, combining the Medical Cannabis Regulation and Safety Act with the Adult Use of Marijuana Act.

   d) AB 266 (Bonta), Chapter 689, Statutes of 2015, SB 643 (McGuire), Chapter 719, Statutes of 2015, and AB 243 (Wood), Chapter 688, Statutes of 2015, was a package of bills that established a licensing and regulatory framework for medical marijuana under the Medical Marijuana Regulation and Safety Act.

REGISTERED SUPPORT / OPPOSITION:

Support

Amalgamated Integrative Providers, Practitioners and Professionals Association
Americans for Safe Access
Association of Regional Center Agencies
California Cannabis Industry Association
California Norml
Cannalogix Foundation
Compassion Center
Eaze Technologies, INC.
Integrative Providers Association
Natura
Operation Evac
Southern California Coalition
Stormy Ray Cardholders Foundation
One individual

Opposition

None on file.

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