

Considerations for State Regulated Cannabis Programs: Medical, Legal and Ethical

*Investigation: Oregon Health System Perpetuates Health
Inequities Via Systemic Anti-Cannabis Bias*

SAMHSA 2019 Grant Requirement for ‘No Cannabis Funding’ Attestation as Interpreted by OHA

Presented to: OCC Patient Equity and Governance Frame Working Subcommittee

By: Liz Porter, MSSM
Health Environment Justice

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Goals of presentation

1. Summarize findings in white paper, “Oregon mental healthcare system and 2019 SAMHSA grant requirement”
2. Review 2019 SAMHSA guidance clause added to state grant recipients with medical cannabis programs policies.
2a Update!
3. Review OHA programs impacted by SAMHSA grant clause
4. Review OHA interpretation of SAMHSA grant clause
5. **More about August 2021 Update**

August 2021 Update: Two states (IL & PA) successfully challenged the 2019 guidance by identifying the potential mental health parity violations it created and the legal risks that this left states with medical cannabis programs.

The policy was updated by SAMHSA. Other states are interpreting the guidance that SAMHSA grant funds cannot be used to procure cannabis for patients, and nothing beyond that stipulation. Nothing in new grant stipulation should marginalize care for those with mental illness or substance misuse problems, including allowing for recommendations for cannabis therapeutics, in new requirement, according to other states.

Can we follow up with response to new grant clause from OHA behavioral services?

1. Summarize findings in white paper, “Oregon mental healthcare system and 2019 SAMHSA grant requirement ”

OHA suggests the newly implemented mental health prohibitions related to cannabis are federal requirements. This is part of the OHA culture that demands a zero-tolerance policy towards cannabis. This is delivering a false (half-truth) and culturally biased message to mental health providers.

- Federal law or the 2019 new policy does not require mental health clinicians receiving SAMHSA grant monies to exclude cannabis therapeutics from their entire practice.
- This policy singles out only mental health conditions, primarily PTSD. It appears to violate the substance and spirit of the Wellstone Mental Health Parity Act (as well as Oregon parity law).
- This policy prohibits the use of cannabis as a therapeutic (substitution) agent to help treat substance misuse problems in patients or for harm reduction, which is antithetical to current best public health practices.

2.a NEWS! Identify policies on cannabis in the Oregon healthcare system that are in conflict with goal of civil rights for cannabis consumers and health parity for medical cannabis uses.

SAMHSA 2019 wording --- HOT OFF THE PRESS... FEDERAL GUIDANCE CHANGED IN AUGUST 2021!

“Grant funds may not be used, directly or indirectly, to 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. See, e.g., 45 C.F.R. § 75.300(a) (requiring HHS to “ensure that Federal funding is expended in full accordance with U.S. statutory requirements.”); 21 U.S.C. §§ 812(c)(10) and 841 (prohibiting the possession, manufacture, sale, purchase or distribution of marijuana). This prohibition does not apply to those providing such treatment in the context of clinical research permitted by the DEA and under an FDA-approved investigational new drug application where the article being evaluated is marijuana or a constituent thereof that is otherwise a banned controlled substance under federal law.”

3. Review OHA programs impacted by SAMHSA grant clause

The Oregon Health Authority (OHA) has received notice of a new special condition of each grant awarded to OHA by the federal Substance Abuse and Mental Health Services Administration (SAMHSA). It applies to:

- The Substance Abuse Prevention & Treatment Block Grant (SAPT BG),
- The Mental Health Block Grant (MHBG),
- Promoting Integration of Primary and Behavioral Health Care (PIPBHC) Grant,
- Project for Assistance in Transition from Homelessness (PATH) Grant,
- Garrett Lee Smith Suicide Prevention Grant,
- State Opioid Response Grant and
- Other discretionary grants that SAMHSA awards to OHA.

<https://www.oregon.gov/oha/HSD/AMH/docs/SAMHSA%20now%20requires%20grantees%20to%20attest%20to%20compliance%20with%20federal%20marijuana%20use%20laws.pdf> (link tested 8/24/21)

4. Review OHA interpretation of SAMHSA grant clause.

OHA's frequently asked questions about SAMHSA's attestation requirement.

How it affects Oregon providers

In Oregon, providers don't prescribe marijuana. Instead, an MD or DO writes a physician's statement supporting the patient's medical need for an Oregon Medical Marijuana Program (OMMP) card. Is such a statement considered "permission"?

Yes. An [OMMP physician's statement](#) or any other formal or informal recommendation to use marijuana as part of the treatment plan for a substance use or mental health disorder, is considered "permission" under this provision.

Will OHA's attestation apply to entities receiving Medicaid and/or Medicare dollars?

No, unless they are receiving SAMHSA grant funds as described above.

Can SAMHSA-funded providers write OMMP physician's statements?

A SAMHSA-funded organization can provide statements to support medical marijuana use for all non-behavioral health conditions on [the OMMP diagnosis list](#).

Which behavioral health conditions are on the current OMMP diagnosis list?

Post-traumatic stress disorder (PTSD) is the only behavioral health diagnosis on the current list.

What happens if a SAMHSA-funded provider has written an OMMP physician's statement for the PTSD diagnosis? Does the statement need to be rescinded?

No. But going forward, the provider cannot write such a statement supporting marijuana use to treat PTSD (for example, when the individual wants to renew his or her OMMP card).

If a non-SAMHSA-funded provider wrote an OMMP physician's statement for a patient, can a SAMHSA grant-subrecipient provider treat the same patient for behavioral health disorders?

Yes.

If a SAMHSA grant-subrecipient provider knows their patient uses marijuana to treat substance use and/or mental health disorders, but DID NOT purchase, permit, recommend or provide it, can the provider still serve the individual?

Yes

<https://www.oregon.gov/oha/HSD/AMH/docs/SAMHSA%20now%20requires%20grantees%20to%20attest%20to%20compliance%20with%20federal%20marijuana%20use%20laws.pdf> (link tested 8/24/21)

5. More about August 2021 Update

SAMHSA AUGUST 2021 REVISED GRANT LANGUAGE

HOT OFF THE PRESS... ***In response to PA & IL mental health parity complaints!***

“SAMHSA grant funds may not be used to purchase, prescribe, or provide marijuana or treatment using marijuana. See, e.g., 45 C.F.R. 75.300(a) (requiring HHS to ensure that Federal funding is expended in full accordance with U.S. statutory and public policy requirements); 21 U.S.C. 812(c)(10) and 841 (prohibiting the possession, manufacture, sale, purchase or distribution of marijuana).”

Did OHA consider the mental health parity issues (like other states) or defer to the most restrictive interpretation without regard to the greater goals of health parity? How can we re-focus OHA into a system-wide consideration of health parity?

Future Health Parity Topics

- Will states really lose federal funding if they provide health parity and other civil rights for patients on cannabis therapeutics?
- Coding, billing and “meaningful use” and cannabis in the electronic medical record – a source of hidden bias? A look at cannabis & health analytics