DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Indian Health Service
Rockville MD 20852

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Dear Tribal Leader:

In response to an increasing number of inquiries from patients and health care providers regarding the legality and prudence of using medical marijuana, the Indian Health Service (IHS) has recently concluded an extensive review of this issue. Our findings have been provided for your review (see enclosure).

Federal law specifically prohibits the use of marijuana under all but very controlled, investigational circumstances. As IHS Chief Medical Officer, I recommend that all IHS, Tribal, and Urban programs fully adhere and comply with Federal law by not prescribing, recommending, possessing, cultivating, processing, manufacturing, or distributing marijuana for medical or other purposes.

Any questions regarding this statement may be directed to CAPT Chris Watson, Principal Pharmacy Consultant, IHS. He can be reached by telephone at (301) 443-4330 or via e-mail at chris.watson@ihs.gov.

Sincerely,

/Susan Karol, M.D./

Susan Karol, M.D.
Chief Medical Officer

Enclosure

Indian Health Service Findings
Medical Use of Marijuana

- From 1997 to 2007, the amount of oxycodone used in the United States increased by 1027 percent.[i] Americans are using 80 percent of the world's supply of all opioids and 99 percent of the world's hydrocodone.[ii]

- Findings from a study published in July 2006 showed that 9 percent of patients with chronic pain abused prescribed pain medications, and 16 percent utilized illicit drugs.[iii] The National Survey on Drug Use and Health reported that 16.7 million Americans aged 12 years and older have used marijuana at least once the month prior to the survey, and youth aged 12 - 17 years have increased marijuana use from 6.7 percent in 2008 to 7.3 percent in 2009.[iv]

- Seventeen (17) states and the District of Columbia have passed legislation regarding the use of medical marijuana in direct violation of the Federal Controlled Substances Act (CSA).[v] States have the authority to regulate all things within their borders that have not specifically been assigned to Federal control. The CSA specifically assigns the regulation of controlled substances to the Drug Enforcement Administration (DEA). As such, this is a federally regulated area. States may be more restrictive in the regulation of controlled substances, but not more lenient.[vi]

- The CSA lists marijuana as a Schedule I controlled substance.[vii, viii] This requires a special DEA registration for the investigational use and manufacture of the drug. The DEA continues to actively prosecute CSA violators.[ix, x, xi, xii]

- The IHS Health Manual (Part 3 - Professional Services, Chapter 7 - Pharmacy) has provisions for investigational drugs, but not for Schedule I controlled substances.[xiii] The IHS Health Manual lists only schedules (II) - (V) as acceptable items for use within the Agency. That means that the IHS will not use Schedule I controlled substances as a matter of Agency policy. In a 1981 ruling, the U.S. Department of Health and Human Services prohibited reimbursement for unapproved drugs, or drugs listed by the Food and Drug Administration (FDA) as ineffective through the Drug Efficacy Study Implementation (DESI).[xiv] The FDA considers marijuana an unapproved drug. This policy has been applied to Federal employees, facilities, and contractors.

- Tribal Annual Funding Agreements require the Tribal entity to meet all applicable laws. The CSA is also applicable here. Not meeting Federal statutes and regulations would put any provider outside the scope of his or her employment. As a consequence, the provider would not be covered under the Federal Tort Claims Act.[xv]

- The National Organization for the Reform of Marijuana Laws (NORML), a medical marijuana advocacy organization, states that physicians may not prescribe medical marijuana without fear of losing his or her license. NORML also states that individuals should expect fines and or jail time if he or she is convicted of possession.[xvi]

REFERENCE LISTING -- IHS Findings -- Medical Use of Marijuana

[i] http://www.drugabuse.gov/PDF/CEWG/CEWGJan09508Compliant.pdf

[ii] *Pain Physician 2007*; 10:399-424; http://www.painphysicianjournal.com/2007/may/2007;10;399-424.pdf

[iii] http://www.ncbi.nlm.nih.gov/pubmed/16886030

[iv] http://www.drugabuse.gov/Infofacts/marijuana.html

[v] http://norml.org/index.cfm?Group_ID=4516

[vi] http://caselaw.lp.findlaw.com/data/constitution/article06/02.html#1

[vii] http://www.deadiversion.usdoj.gov/21cfr/cfr/index.html

[viii] http://www.deadiversion.usdoj.gov/21cfr/21usc/812.htm

[ix] http://www.deadiversion.usdoj.gov/fed_regs/notices/2001/fr0418/fr0418c.htm

[x] http://www.deadiversion.usdoj.gov/fed_regs/notices/2001/fr0418/fr0418a.htm

[xi] http://www.deadiversion.usdoj.gov/fed_regs/actions/2002/fr1220.htm

[xii] http://www.deadiversion.usdoj.gov/fed_regs/actions/2007/fr05033.htm

[xiii] http://home.pharmacy.ihs.gov/DOCS/docs_news_gen/1/Manualchapter7.pdf

[xiv] https://www.cms.gov/MedicaidDrugRebateProgram/12_LTEIRSDrugs.asp

[xv] http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=29833157cbd65f9b7e69ad6cf10103a7&rgn=div6&view=text&node=25:2.0.4.10.1.13&idno=25

[xvi] http://norml.org