

PORT HURON HOUSING COMMISSION MEDICAL MARIJUANA POLICY

With respect to the Michigan Marijuana Laws, the Port Huron Housing Commission will follow its current Public Housing Admissions and Continued Occupancy Policy and Section 8 Administrative Policy and all current HUD regulations which will include the Memorandum dated SEPTEMBER 24, 1999, issued by the U.S. Department of Housing and Urban Development on the Medical Use of Marijuana in Public Housing which was included in the email dated October 13, 2010, from the Detroit Office of Housing and Urban Development on the Treatment of Medical Marijuana in Federally Subsidized Housing Programs, as well as the HUD Memorandum dated February 10, 2011, in determining admission and continued occupancy of all applicants and tenants. (The Memorandum and E-mail are attached to this procedure for reference.)

Pursuant to these regulations, if it is determined that a tenant will not be evicted or terminated due to medical marijuana pursuant to reasons stated in Section III Conclusion of the HUD Memorandum noted above, such reasons shall be noted in the tenant file and the tenant shall be required to complete a Medical Marijuana Use Certification Form.

Related Documents/Forms:

HUD Memorandum dated September 24, 1999

HUD email, dated October 13, 2010, on the Treatment of Medical Marijuana in Federally Subsidized Housing Programs

HUD Memorandum dated February 10, 2011

Medical Marijuana Use Certification Form

From: Garrett, Willie C [<mailto:Willie.C.Garrett@hud.gov>]
Sent: Wednesday, October 13, 2010 7:07 PM
To: Betty Ward
Subject: RE: Medical Marijuana

Betty sorry for the delay...here is what was sent to another PHA. If you want one sent to you for your records I can do so, let me know. Thanks!

SUBJECT: Treatment of Medical Marijuana in Federally Subsidized Housing Programs

This Office of Public Housing has completed its review of your inquiry regarding whether the XXX Housing Commission (XXX) is required to terminate the tenancy of a person for the use of medical marijuana. The U.S. Department of Housing and Urban Development, Office of General Counsel (HUD) has approved guidance that states that State laws which legalize the use of marijuana for medical purposes are preempted by federal law, specifically of the Quality Housing and Work Responsibility Act of 1998 (Public Reform Act).

HUD has determined that State statutes which legalize the use of medical marijuana stand as an obstacle to the accomplishment and execution of the purposes and objectives of Section 567(b)(1) of the Public Reform Act which requires that PHAs establish standards to prohibit admission to federally assisted housing for any household with a member:

- . Who the PHA determines is illegally using a controlled substance, or
- . Whose illegal use (or pattern of illegal use) of a controlled substance may interfere with the health, safety and right to peaceful enjoyment of the premises by other residents.

The Controlled Substance Act continues to list marijuana as a controlled substance despite the fact that State law may have legalized its use for medical reasons. State medical marijuana statutes which purport to remove medical marijuana from classification as a controlled substance are preempted by Federal Law for the purposes of the Public Reform Act marijuana is still a controlled substance, and as such, individuals who use marijuana, medically or otherwise, should not be admitted to public housing.

As to existing public housing tenants, Section 577(a) of the Public Housing Reform Act requires that PHAs must establish standards or lease provisions for continued assistance or occupancy in federally assisted housing that allow the agency or owner to terminate the tenancy of assistance for any household with a member:

- . Who the public housing agency or owner determines is illegally using a controlled substance; or
- . Whose illegal use (or pattern of illegal use) of a controlled substance is determined by the PHA or owner to interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

HUD has not extensively regulated the area of eviction and termination of assistance, leaving the ultimate determination of whether to evict or to terminate assistance to the reasonable discretion of the PHA operating under its own established policies. HUD intends that PHAs and owners utilize their discretion under Section 577 to make consistent and reasoned determinations with respect to eviction and termination of assistance. PHAs and owners should consider all relevant factors in determining whether to terminate the tenancy or assistance, including, but not limited to physical condition of the medical marijuana user, the extent to which the medical marijuana user has other housing alternatives, if evicted or if assistance were terminated, and the extent to which the PHA or owner would benefit from enforcing lease provisions prohibiting the illegal use of controlled substances.

Should you have further questions or concerns please contact XXXXX, Public Housing Revitalization Specialist by calling (313) 226-7900 extensionXXXX.

Sincerely,

Willie C. Garrett
Director
Office of Public Housing

From: Betty Ward [<mailto:BWard@phhousing.org>]
Sent: Monday, October 11, 2010 4:21 PM
To: Garrett, Willie C
Cc: Greg Stremers
Subject: Medical Marijuana

Hi Mr. Garrett:

The Port Huron Housing Commission is in the process of terminating two Section 8 Voucher clients for the use and growing of medical marijuana.

Pursuant to the Memorandum from the U.S. Department of Housing and Urban Development, Washington DC dated September 24, 1999, we have determined that marijuana continues to be considered an illegal substance by the federal government and recipients of federal assistance are therefore in violation of the program and should be terminated. This same notice also affords the Housing Commission some discretionary items to consider:

- . The physical condition of the medical marijuana user;
- . The extent to which the medical marijuana user has other housing alternatives if evicted or terminated; and
- . The extent to which the PHA or owner would benefit from enforcing lease provisions that prohibit illegal use of controlled substances.

Following discussion with our legal counsel, we have made the following determinations on the items above:

- . We do not want to start making judgment calls on each person's physical condition. This opens doors for discrimination.
- . There are programs offering state assistance, which may qualify since the state has legalized medical marijuana.
- . Our PHA would benefit by not allowing usage of medical marijuana and the growing of plants in our sites due to the fact that we are unable to verify that the usage is truly medically approved due to HIPA laws. We feel should we approve such usage, we are opening the doors for everyone. We have reviewed statistics in areas where a concentration of distribution activities exist showing tremendous increases in crime.

In summary, although our decision is not final as of yet, we are leaning toward strictly enforcing our policies by not allowing illegal drug usage (by federal standards). In both cases, the clients are very adamant to retain their assistance and are contacting the ACLU.

Since I have heard horror stories on the cost of some of these lawsuits, I would very much appreciate the HUD Detroit Office's legal opinion as to how these cases should be handled.

Very sincerely,

Betty

Betty Ward
Executive Director

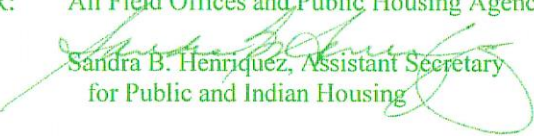


U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-5000

ASSISTANT SECRETARY FOR
PUBLIC AND INDIAN HOUSING

February 10, 2011

MEMORANDUM FOR: All Field Offices and Public Housing Agencies (PHAs)

FROM: 
Sandra B. Henriquez, Assistant Secretary
for Public and Indian Housing

SUBJECT: Medical Marijuana Use In Public Housing
and Housing Choice Voucher Programs

Overview

The Department has recently received numerous inquiries regarding the use of medical marijuana¹ in the Public Housing (PH) and Housing Choice Voucher (HCV) programs². This memorandum intends to serve as guidance for field offices and PHAs on admissions, continued occupancy, and termination policies in states that have enacted laws that allow the use of medical marijuana. Currently fourteen states (Alaska, California, Colorado, Hawaii, Maine, Michigan, Montana, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, and Washington) and the District of Columbia have laws that legalize medical marijuana use.

New Admissions

Based on federal law, new admissions of medical marijuana users are prohibited into the PH and HCV programs. The Controlled Substances Act (CSA) lists marijuana as a Schedule I drug, a substance with a very high potential for abuse and no accepted medical use in the United States. The Quality Housing and Work Responsibility Act (QHWRA) of 1998 (42 U.S.C. §13661) requires that PHAs administering the Department's rental assistance programs establish standards and lease provisions that prohibit admission into the PH and HCV programs based on the illegal use of controlled substances, including state legalized medical marijuana. State laws that legalize medical marijuana directly conflict with the admission requirements set forth in QHWRA and are thus subject to federal preemption. K

Current Residents

For existing residents, QHWRA requires PHAs to establish occupancy standards and lease provisions that will allow the PHA to terminate assistance for use of a controlled substance. However, the law does not compel such action and PHAs have discretion to determine continued occupancy policies that are most appropriate for their local communities. PHAs can also determine whether to deny assistance to or terminate individual medical marijuana users, rather than entire households, for both applicant and existing residents when appropriate. PHAs have discretion to determine, on a case-by-case basis, the appropriateness of program termination of existing residents for the use of medical marijuana.

¹ The Department defines medical marijuana as marijuana which, when prescribed by a physician to treat a serious illness such as AIDS, cancer, or glaucoma, is legal under State law.

² Housing Choice Voucher programs include tenant-based vouchers and project-based vouchers.

PHAs in states that have enacted laws legalizing the use of medical marijuana must therefore establish a standard and adopt written policy regarding whether or not to allow continued occupancy or assistance for residents who are medical marijuana users. The decision of whether or not to allow continued occupancy or assistance to medical marijuana users is the responsibility of PHAs, not of the Department.

Food and Drug Administration Approved Drugs

PHAs should also be aware that the Food and Drug Administration (FDA) has approved drugs for medical uses which are comprised of marijuana synthetics, such as Marinol and Cesamet. These drugs are not medical marijuana and are legal under federal laws. These products have been through the FDA's rigorous approval process and have been determined to be safe and effective for their indications. They are therefore allowed in the public housing and voucher programs.

Thank you for your partnership and participation in the Department's programs, and for your attention to this important issue in providing quality housing and communities for all residents of public housing and voucher programs. Questions regarding this memorandum may be directed to Ms. Diane Yentel at 202-402-6051 or Diane.E.Yentel@hud.gov.