Agenda Item/Title:  5.3 Pharmacies and Hemp Derived Cannabidiol

Date SBAR Communication Prepared:  August 26, 2019

Reviewer:  Caitlin Gates, Rules and Legislative Consultant and Tracy West, Interim Executive Director (with support from Chris Gerard AAG)

Link to Action Plan:

- Action
- Information
- Follow-up
- Report only

Situation:

Due to changes in law on both the state and federal level with regards to hemp staff has begun to receive questions from pharmacies as to what the laws are with regards to the possession and sale of CBD (Cannabidiol) products.

Background:

In 2015 the Washington legislature passed SESSH 2136 which made major changes to the legal marijuana market, included in this bill was the creation of cannabis health and beauty aids (CHABA), which were exempted from the regulations and penalties of RCW 69.50.

In December 2018 the United States Congress passed the Agriculture Improvement Act of 2018 (2018 Farm Bill). The 2018 Farm Bill amended the Controlled Substances Act (CSA) to an extent that hemp is no longer a controlled substance. During the 2019 session the Washington State Legislature followed suit. The Washington State Department of Agriculture also recently announced that hemp derived CBD in ingestible products is prohibited.

The FDA also maintains their legal authority to regulate products containing cannabis or cannabis-derived compounds.

Retail spaces have begun selling cannabis health and beauty aid products (“CHABA”) as well as other hemp derived products for some time now.

Assessment:

Given the change in laws staff has prepared a guidance document describing the changes and how this will impact licensees. That document is attached.

Recommendation:

1. The Commission can choose to not allow pharmacies to possess and sell CBD products based on the risk of violating federal law.
2. The Commission can choose to accept the guidance document and direct inspectors not to take enforcement action against pharmacies that possess and sell CBD.
3. The Commission can direct staff to go back and do additional research.

Follow-up Action: If approved send guidance document out on GovDelivery to notify licensees.
Background

During the 2015 session, the Washington State legislature passed SESSHB 2136, this bill made a number of changes to the legal marijuana market that had been approved by voters in 2012. Section 701 added a new chapter in chapter 69.50 RCW which created cannabis health and beauty aids (CHABA) and exempted them from the regulations and penalties of the chapter. In order to qualify as a CHABA product it had to be intended for topical use only, delta-9-tetrahydrocannabinol (THC) of no more than .3 percent, not cross the blood brain barrier and not be intended for ingestion.

In December 2018 the United States Congress passed the Agriculture Improvement Act of 2018 (2018 Farm Bill). The 2018 Farm Bill amended the Controlled Substances Act (CSA) to an extent that hemp is no longer a controlled substance. Hemp is defined under the 2019 Farm Bill to include any cannabis plant, or derivative thereof, which contains not more than 0.3 percent THC on a dry-weight basis.

During the 2019 session, the Washington State legislature amended the state Uniform Controlled Substances Act (UCSA, chapter 69.50 RCW). The bill (ESSB 5276) amended the UCSA to the extent that “hemp” and “industrial hemp” are no longer considered a controlled substance.

After the passage of the 2018 Farm Bill, the FDA explained in a statement that its “current authority to regulate products containing cannabis or cannabis-derived compounds” was not modified by the 2018 Farm Bill. The FDA also explained:

- That cannabis-derived products, including CBD products, that make claims of therapeutic benefit, must have been approved by the FDA.
That no food introduced into interstate commerce can contain added CBD or THC regardless of whether the substances are hemp derived.

That CBD or THC cannot be added to dietary supplements regardless of whether the substances are hemp derived.

The DEA continues to have marijuana and all its derivatives (including hemp) listed under Schedule I in their Controlled Substance Act Regulations.

**What does this mean for CBD products?**

Under federal law, if the CBD product contains cannabis-derived ingredients that meet the definition of hemp, then the CBD product is not a controlled substance. However, because CBD and THC are active ingredients in FDA-approved drugs, CBD, no matter how it is derived, cannot be added to food, and CBD products cannot be marketed as dietary supplements. In addition, CBD products cannot be marketed with a claim of therapeutic benefit.

Under Washington State law, if a CBD product contains cannabis-derived ingredients that meet the definition of hemp or industrial hemp, then the CBD product is not a controlled substance. In addition, if the CBD product meets the definition of a cannabis health and beauty aid (CHABA, [RCW 69.50.575](#)) then it is not considered a controlled substance at the state level. If a product contains cannabis-derived ingredients that do not meet the definition of “hemp”, “industrial hemp” or CHABA, then the product must be obtained within a retail shop licensed by the Washington State Liquor and Cannabis Board.

**Can a pharmacy possess and sell CBD products?**

Facilities licensed by the Pharmacy Quality Assurance Commission (Commission) cannot possess ingestible products that contain CBD or THC no matter the derivative source. The Commission will not take enforcement action against pharmacies who choose to sell CBD topical products that meet the state law definition of “hemp”, “industrial hemp” or CHABA. Pharmacies choosing to sell CBD topical products should consult with their own lawyers about their legal risks, and be cognizant of other state and federal regulators when choosing to possess and sell CBD products.