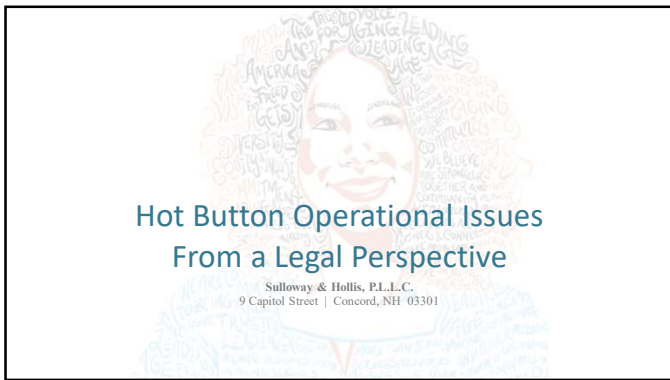




1




2




3

Today's Presenters

Christopher Pyles, Esq.




Chris Pyles is a Member and former Managing Director at Sulloway & Hollis. He has been helping local, regional, and national clients protect their companies and improve their workplace culture for more than twenty years. Chris has broad experience dealing with almost every type of employment issue and a focus on practical and economical solutions. That starts with getting to know each client, learning what values and goals are important, and working together to achieve their goals.




4

Sulloway & Hollis

Robert Best, Esq.




Robert Best is a Member at Sulloway & Hollis. He chairs the firm's Business Law Practice Group and is a member of the Executive Committee that guides the firm. His practice focuses on healthcare, non-profit, real estate, and business clients. Bob assists clients with a wide variety of administrative and regulatory matters important to healthcare and business organizations. Bob joined the firm in 2015 and works in our Concord, NH office.




5

Sulloway & Hollis

Bradley Holt, Esq.



Brad Holt is a member at Sulloway & Hollis. Mr. Holt serves as trusted counsel to his clients, combining a 25-year legal career focused on litigation and dispute resolution, counseling, regulatory compliance and training, with significant experience as a senior operational leader with the military.



6



7

Today's presentation

- Medical Marijuana in Facilities
- Cameras in Residents' Rooms
- Cohabitation Arrangements
- Service/Emotional Support & Companion Animals

SeniorAge
Annual Conference
March 29-30, 2023

Sulloway & Hollis
COUNSELLORS AT LAW

8




9

Medical Marijuana in Facilities

Federal Laws and Regulations

- ✦ Marijuana remains a Schedule 1 drug under the Controlled Substances Act (CSA)
- ✦ Providers that accept Medicare and Medicaid funding are required to comply with certain federal standards and laws.

SeniorAge
Senior & Adult Care
Annual Conference
March 29, 2023

Sulloway & Hollis
COUNSELLORS AT LAW

10

Medical Marijuana in Facilities

Federal Laws and Regulations

- ✦ Under the Social Security Act (SSA) individuals or entities that are convicted of schedule 1 related felonies *could* be excluded from participation in federal health care programs.
- ✦ Could allowing medical marijuana put Medicare and Medicaid funds at risk?




SeniorAge
Senior & Adult Care
Annual Conference
March 29, 2023

Sulloway & Hollis
COUNSELLORS AT LAW

11

Medical Marijuana in Facilities

Federal Laws and Regulations

- ✦ HUD prohibits federally assisted (section 8) housing communities from admitting new residents who use medical marijuana,
- ✦ but gives the community discretion on how to address existing residents who use medical marijuana.
- ✦ They determined that reasonable accommodation requests for the use of medical marijuana under the Fair Housing Act are *not* allowed.




SeniorAge
Senior & Adult Care
Annual Conference
March 29, 2023

Sulloway & Hollis
COUNSELLORS AT LAW

12

Medical Marijuana in Facilities
State Laws and Regulations – New Hampshire

- ✦ Medical Marijuana use is legal in NH
 - ✦ RSA 126-X and NH Admin Rule He-C 400/401
- ✦ Qualifying Patient must possess a valid registry ID card and “qualifying medical condition” under RSA 126-X:1

Note: A designated caregiver may receive compensation for costs, not including labor, associated with assisting a qualifying patient who has designated the designated caregiver to assist him or her with the therapeutic use of cannabis.





13

Medical Marijuana in Facilities
State Laws and Regulations – Maine

- ✦ Recreational Marijuana is legal in Maine.
 - ✦ Outlined in Maine Law - Title 22 Ch. 558; 558-C
- ✦ Medical Marijuana
 - ✦ A qualifying patient may designate a long-term care facility to assist with the qualifying patient’s medical use of cannabis if that use is consistent with the facility’s policy and pursuant to subsection 1, paragraph F 1, subparagraph (2) of Title 22





14

Medical Marijuana in Facilities
Resident Eligibility

- ✦ New Hampshire
 - ✦ A qualifying patient is a person who has been diagnosed with a “qualifying medical condition” under RSA 126-X:1
 - ✦ They must possess a valid registry ID card
- ✦ Maine
 - ✦ A qualifying patient possessing a valid medical provider written certification who is compliant with rules outlined in the States “Medical Use of Marijuana program. Qualifying patients who want to secure a *registry identification card* can register with the State.





15

Medical Marijuana in Facilities
Administration – New Hampshire

- ✦ Designated caregiver Possesses a valid registry identification card issued pursuant to RSA 126-X:4
- ✦ Is at least 21 years of age
- ✦ Has agreed to assist with the therapeutic use of cannabis for one or more (not to exceed 5*) qualifying patients
- ✦ Has never been convicted of a felony or any felony drug-related offense

*except if the qualifying patient and designated caregiver each live greater than 50 miles from the nearest CIP distributor in which case the designated caregiver may assist with the therapeutic use of cannabis for up to 9 qualifying patients

16

Medical Marijuana in Facilities
Administration – Maine

- ✦ Care facility must obtain a registration certificate for the facility.
- ✦ Facility Staff who will be assisting a qualifying patient with the patient's medical use of cannabis
- ✦ Must be at least 21 years of age
- ✦ Have not been convicted of a disqualifying drug offense.
- ✦ The long-term care facility and the staff of the facility may not cultivate cannabis plants for the patient.

17

Medical Marijuana in Facilities
Storage and Security – New Hampshire

- ✦ Patient can possess up to two ounces of "usable cannabis"
- ✦ Designated caregiver can possess up to two ounces of "usable cannabis" for each qualifying patient.
- ✦ Facility shall treat cannabis in a manner similar to controlled prescription medications with respect to its storage, security, and administration


  

18

Medical Marijuana in Facilities

Storage and Security - Maine

- Facility shall have a policy that addresses how inventory is recorded and access monitored
 - Access to inventory.** When marijuana is removed from the facility's inventory, the cardholder must document this in the patient's MMMP record.
 - Daily inventory.** Prepared marijuana must be stored in accordance with the provisions for storing controlled substances and inventoried daily by two staff persons who have MMMP registry identification cards.

SeniorAge
Maine & New Hampshire
Annual Conference
2022


Sulloway & Hollis
COUNSELLORS AT LAW

19

Medical Marijuana in Facilities

Liability Concerns

- Senior living facilities may be held liable for the mishandling or misuse of medical marijuana.
- It's important to understand the potential liability issues and take steps to mitigate any risks.




SeniorAge
Maine & New Hampshire
Annual Conference
2022

Sulloway & Hollis
COUNSELLORS AT LAW

20

Medical Marijuana in Facilities

Staff Training

- Staff members should be trained on the proper administration of medical marijuana and should understand the policies and procedures related to its use.




SeniorAge
Maine & New Hampshire
Annual Conference
2022

Sulloway & Hollis
COUNSELLORS AT LAW

21



22

Cameras in Residents' Rooms

Federal & State laws and regulations

- Currently, no federal laws regulate the use of "Granny Cams"
- Federal regulations give nursing home residents the right to be treated with dignity and respect. *42 CFR 483.10(e)*
 - This includes while receiving care and during any interactions with nursing home staff, other residents, and visitors.
- Residents are also guaranteed the right to privacy in resident rooms, personal care, and in any communication during visits. *42 CFR 483.10(h)(1)*

SeniorAge
Annual Conference
March 2023

Sulloway & Hollis
COUNSELLORS AT LAW

23

Cameras in Residents' Rooms

State Laws and Regulations

- New Hampshire and Maine do not currently have laws directly related to cameras in nursing homes
- As of 2022, 14 states allow private cameras in nursing homes: CT, IL, KS, LA, MD, MN, MO, NJ, NM, OH, OK, TX, UT and WA
- Both New Jersey and Wisconsin allow hidden cameras if a person suspects their loved one is being abused.

SeniorAge
Annual Conference
March 2023

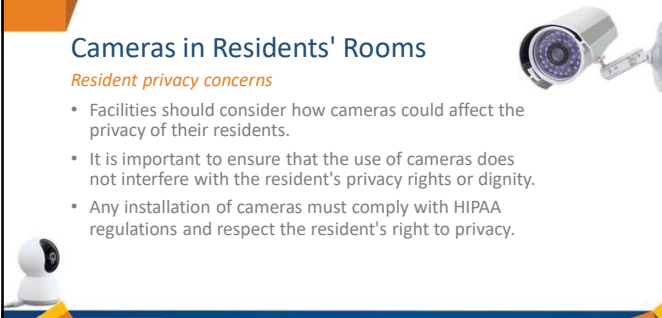
Sulloway & Hollis
COUNSELLORS AT LAW

24

Cameras in Residents' Rooms

Resident privacy concerns

- Facilities should consider how cameras could affect the privacy of their residents.
- It is important to ensure that the use of cameras does not interfere with the resident's privacy rights or dignity.
- Any installation of cameras must comply with HIPAA regulations and respect the resident's right to privacy.



SeniorAge
Senior & Health Solutions
Annual Conference
2022/2023

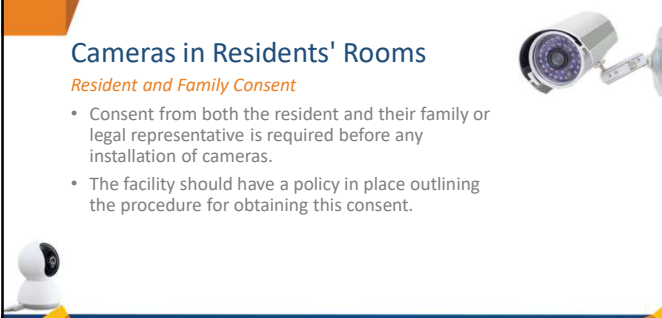
Sulloway & Hollis
COUNSELLORS AT LAW

25

Cameras in Residents' Rooms

Resident and Family Consent

- Consent from both the resident and their family or legal representative is required before any installation of cameras.
- The facility should have a policy in place outlining the procedure for obtaining this consent.



SeniorAge
Senior & Health Solutions
Annual Conference
2022/2023

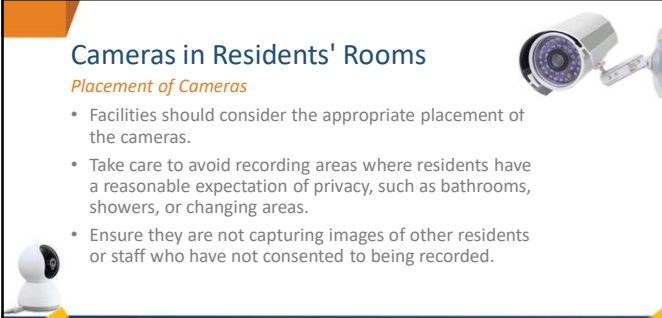
Sulloway & Hollis
COUNSELLORS AT LAW

26

Cameras in Residents' Rooms

Placement of Cameras

- Facilities should consider the appropriate placement of the cameras.
- Take care to avoid recording areas where residents have a reasonable expectation of privacy, such as bathrooms, showers, or changing areas.
- Ensure they are not capturing images of other residents or staff who have not consented to being recorded.



SeniorAge
Senior & Health Solutions
Annual Conference
2022/2023

Sulloway & Hollis
COUNSELLORS AT LAW

27

Cameras in Residents' Rooms

Liability Concerns

- Facilities should consider the potential legal and financial implications of allowing cameras in resident rooms.
- This might include liability issues & insurance coverage.
- Facilities may be held liable for the improper use of cameras or the mishandling of footage.
- It is important to understand the potential liability issues and take steps to mitigate any risks.




SeniorAge
Annual Conference



Sulloway & Hollis
COUNSELLORS AT LAW

28

Cameras in Residents' Rooms

Access to and Retention of Footage

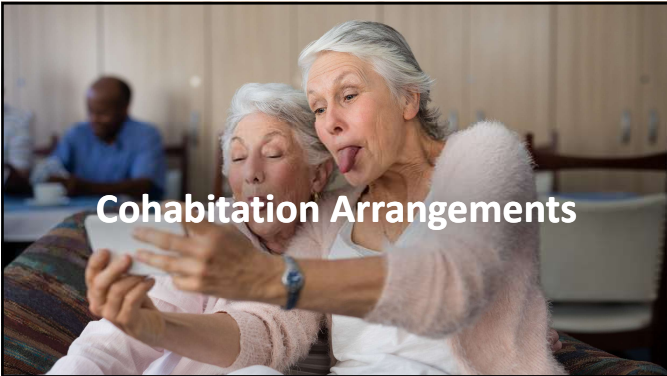
- It is important to establish clear policies regarding who has access to the footage and under what circumstances.
- Equally important is a policy regarding the retention of footage captured by the cameras.
 - The footage should be stored securely and accessed only by authorized personnel.

SeniorAge
Annual Conference

Sulloway & Hollis
COUNSELLORS AT LAW

29



Cohabitation Arrangements

30

Cohabitation Arrangements

What exactly is a Cohabitation...

- Cohabitation is two or more individuals who are not related by blood or marriage choosing to live together in a shared living arrangement within the facility.
- It helps reduce expenses, alleviate loneliness, and provide mutual support and companionship.
- It may involve sharing a living space, such as an apartment or room, and splitting the associated costs and responsibilities.
- This arrangement may also include a romantic aspect, but it does not necessarily have to.



SeniorAge
Senior & Adult Care
Annual Conference
2022/23


Sulloway & Hollis
COUNSELLORS AT LAW

31

Cohabitation Arrangements

Benefits

- Cohabitation is not the best option for everyone, but it does have tangible benefits
 - Increased social interaction
 - Shared experiences
 - Emotional support
 - Increased sense of purpose
 - Enhanced well-being:



SeniorAge
Senior & Adult Care
Annual Conference
2022/23

Sulloway & Hollis
COUNSELLORS AT LAW

32

Cohabitation Arrangements

State Laws and Regulations

- No specific Federal or State laws govern cohabitation
- Guidelines on standard of care can be found in
 - The NH Nursing Home Reform Act
 - Americans with Disabilities Act (ADA)
 - Fair Housing Act
 - And the ubiquitous HIPAA guidelines




SeniorAge
Senior & Adult Care
Annual Conference
2022/23

Sulloway & Hollis
COUNSELLORS AT LAW

33

Cohabitation Arrangements

Eligibility Requirements

- Eligibility requirements must be reasonable, non-discriminatory and address things like
 - Age Requirement
 - Health Requirement
 - Background Check
 - Compatibility
 - Financial Responsibility
 - Agreement to Rules
 - Length of Stay




SeniorAge
Aging & Health Solutions
Annual Conference
2022/23

Sulloway & Hollis
COUNSELLORS AT LAW

34

Cohabitation Arrangements

Consent

- A consent agreement protects the safety and well-being of the residents and to ensures that all parties involved are fully informed and agree to the terms of the shared living arrangement.
- A “Cohabitation Consent Policy” should include




SeniorAge
Aging & Health Solutions
Annual Conference
2022/23

Sulloway & Hollis
COUNSELLORS AT LAW

35

Cohabitation Arrangements

Consent

- **Informed Consent** - Residents must provide informed consent before moving in together.
- **Capacity to Consent** – They must have the capacity to provide informed consent.
- **Voluntary Consent** - Consent must be given freely and voluntarily, without coercion or undue influence.
- **Withdrawal of Consent** - Residents should have the right to withdraw their consent at any time

Design Note:
THIS SLIDE HAS
ANIMATION FOR
EACH BULLET




SeniorAge
Aging & Health Solutions
Annual Conference
2022/23

Sulloway & Hollis
COUNSELLORS AT LAW

36

Cohabitation Arrangements

Lease Agreements

- Should there be a "Lease Agreement"
- A formal agreement outlines:
 - The terms and conditions of the arrangement
 - Rent, utilities, and other shared expenses.





37

Cohabitation Arrangements

Resident safety Concerns

- When creating a cohabitation policy, consider the following resident safety concerns:
 - **Health Conditions** - Ensure that the residents are medically fit to cohabit
 - **Behavioral Issues** - Residents with behavioral issues can pose a risk
 - **Personal Care** - Residents may require personal care services
 - **Fall Risk** - Ensure the environment is safe and accessible
 - **Medication Management** - Ensure that medication is managed appropriately to avoid overdose or underdose.





38

Cohabitation Arrangements

Facility Liability Concerns

- When writing a cohabitation policy consider the following facility liability concerns
 - **Safety concerns:** Clearly outline safety measures to ensure the well-being of the residents. Outline procedures for emergency response, fall prevention, and the use of mobility aids.
 - **Medical concerns:** Outline guidelines for monitoring and managing medical issues.
 - **Liability for accidents or injuries:** Establish procedures for reporting accidents or injuries and assign liability for damages or medical expenses.





39



Service/Emotional Support & Companion Animals

40

Service/Emotional Support & Companion Animals

Service Animal

- A service animal is a specially trained animal, usually a dog, that provides assistance to an individual with a disability.
 - They are trained to perform specific tasks that help their owners with daily living activities and are protected by the Americans with Disabilities Act (ADA).




41

Service/Emotional Support & Companion Animals

Emotional Support Animal

- An emotional support animal (ESA) is an animal that provides comfort and support to an individual with a mental or emotional disability.
 - Unlike service animals, ESAs do not require specialized training to perform specific tasks, but rather provide emotional support through their presence.




42

Service/Emotional Support & Companion Animals
Companion Animal

- A companion animal is an animal that provides companionship, affection, and enjoyment to their owner, but is not specifically trained to provide a service or support for an individual's disability.
 - Examples of companion animals include pets such as cats and dogs, as well as other animals like birds and rabbits.




43

Service/Emotional Support & Companion Animals
Federal & State Law - Governed by ADA

- New Hampshire (RSA 167-D:1-10) "Service animal" means any dog individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.
 - Other species of animals, whether wild or domestic, trained or untrained, are not service animals for purposes of this definition.




44

Service/Emotional Support & Companion Animals
Federal & State Law - Governed by ADA

- Maine (Title 5, Section 4553) "Service Animal" is a dog that is trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual or other mental disability.
 - Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability.




45



Service/Emotional Support & Companion Animals

Reasonable Accommodation Requirements

- A reasonable accommodation request for an assistance animal may include
 - A request to live with an assistance animal at a property where the facility provider has a no-pets policy
 - A request to waive a pet deposit, fee, or other rule as to an assistance animal




LeadingAge
Senior Living Solutions
Annual Conference
2023

Sulloway & Hollis
COUNSELLORS AT LAW

46



Service/Emotional Support & Companion Animals

Verification of Animal Status

- The verification requirements for service animals and emotional support animals (ESAs) in senior living facilities are governed by different laws and regulations, which impose different limitations on what the facility can ask for.
 - There are limitations on what information can be requested, and it is important to understand these limitations.




LeadingAge
Senior Living Solutions
Annual Conference
2023

Sulloway & Hollis
COUNSELLORS AT LAW

47



Service/Emotional Support & Companion Animals

Verification of Animal Status - Service Animals

- The Americans with Disabilities Act sets strict limitations on what a facility can ask to determine if a dog qualifies as a service animal. Specifically, the facility may only ask two questions
 - Is the dog required because of a disability?
 - What work or task has the dog been trained to perform?
- The facility cannot ask for documentation, proof of training or certification or ask about the nature or extent of the person's disability.




LeadingAge
Senior Living Solutions
Annual Conference
2023

Sulloway & Hollis
COUNSELLORS AT LAW

48

Service/Emotional Support & Companion Animals
Verification of Animal Status - Emotional Support Animals

- The verification requirements for emotional support animals (ESAs) are less clear.
 - The Fair Housing Act (FHA) requires senior living facilities to make reasonable accommodations for individuals with ESAs, but does not provide clear guidelines on what documentation can be requested to verify the animal's status.
 - In general, facilities may ask for documentation from a licensed healthcare professional, such as a therapist or doctor, that confirms the individual's need for an ESA.



CoastalAge
Senior Living Solutions
Annual Conference
2022/2023

Sulloway & Hollis
COUNSELLORS AT LAW

49

Service/Emotional Support & Companion Animals
Health and Safety Concerns

- Facilities have a responsibility to ensure the health and safety of all residents, including those with disabilities who use Service Animals and Emotional Support animals.
 - It's important to establish policies and procedures to address any potential health and safety concerns related to these animals.



CoastalAge
Senior Living Solutions
Annual Conference
2022/2023

Sulloway & Hollis
COUNSELLORS AT LAW

50

Service/Emotional Support & Companion Animals
Liability Concerns

- Facilities may be held liable for any injuries or damages caused by Service Animals and Emotional Support animals.
 - It is important to understand the potential liability issues and take steps to mitigate any risks.



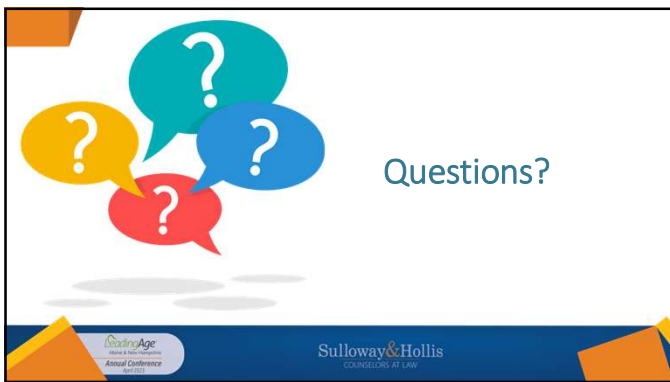
CoastalAge
Senior Living Solutions
Annual Conference
2022/2023

Sulloway & Hollis
COUNSELLORS AT LAW

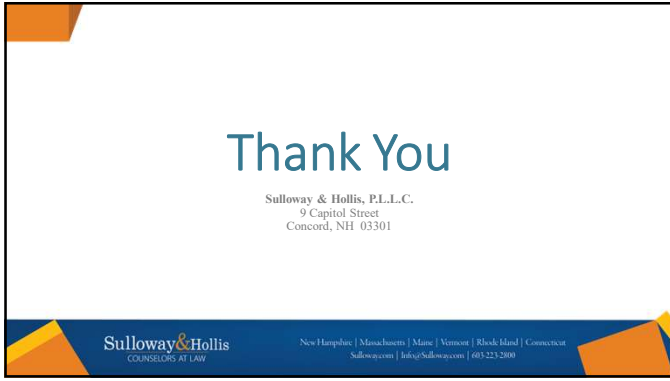
51



52



53



54
