

LAW SUMMARY

Office of Legislative Legal Services



MEDICAL MARIJUANA¹

History

In 2000, Colorado voters adopted Section 14 of Article XVIII of the state Constitution ("constitutional amendment") legalizing the use of medical marijuana by a patient with a debilitating medical condition. During the 2001 legislative session, the General Assembly adopted the two provisions that the constitutional amendment required. The first² codifies medical marijuana unlawful acts. The second³ created the medical marijuana program in the department of public health and environment ("department"). The issue was dormant until 2010, when the general assembly adopted legislation standardizing the medical marijuana patient-physician relationship and created a medical marijuana business regulatory structure.

Medical Marijuana Patients

A medical marijuana patient is an individual who:

- suffers from one of the debilitating conditions listed in the constitutional amendment or a disabling medical condition as defined in Section 25-1.5-106 (2)(a.7), C.R.S.;
- has received a recommendation from a physician stating that the patient suffers from the debilitating or disabling condition and may benefit from the use of medical marijuana; and
- has a medical marijuana registry card or has applied for a card and at least 35 days have passed without a response from the department.

A patient who is under 21 years of age must have a recommendation from two physicians stating the patient suffers from a debilitating or disabling condition.

¹ This summary contains information commonly requested from the Office of Legislative Legal Services. It does not represent an official legal opinion of the General Assembly or the state of Colorado and does not bind the members of the General Assembly. It is intended to provide a general overview of Colorado law as of the date of its preparation. Any person needing legal advice should consult the person's own lawyer and should not rely on the information in this memorandum.

² Section 18-18-406.3, C.R.S.

³ Section 25-1.5-106, C.R.S.

A patient may possess only two ounces of useable medical marijuana and up to six marijuana plants, only three of which are flowering. When in possession of medical marijuana, a patient must possess the patient's registry identification card or application if the application has not been processed. A medical marijuana patient may not grow more than 99 plants. Only a licensed medical marijuana business may grow more than 99 plants. A medical marijuana patient who grows more than six plants is encouraged to register the grow with the marijuana licensing authority.

Physicians

Physicians have the authority to recommend medical marijuana to patients suffering from debilitating or disabling conditions. To recommend medical marijuana, a physician must be in good standing to practice medicine and a bona-fide physician-patient relationship must exist. The bona-fide relationship must include a counseling or treatment relationship, and the physician must consult with the patient in person concerning the patient's debilitating or disabling medical condition before making a medical marijuana recommendation. After a physician recommends the use of medical marijuana, the physician certifies the debilitating or disabling medical condition and other information to the department. The certification must include, among other information, the maximum THC potency level of medical marijuana and the daily authorized quantity if in excess of the maximum allowed amounts. To prevent questionable recommendations, a physician may not receive payment from or offer payment to a primary caregiver, distributor, or any other provider of medical marijuana and may not charge an additional fee for an extended plant count recommendation or for an exceptional recommendation. The constitutional amendment provides physicians an affirmative defense or an exception to criminal charges for recommending medical marijuana.

If a physician violates the state constitution, state statutes, or promulgated rules related to medical marijuana, there is an enforcement process. The enforcement process is divided between the state board of medical examiners and the department. The state board of medical examiners investigates and sanctions a violation related to a medical marijuana physician's standard of care. For a violation related to an improper medical marijuana recommendation, the department conducts a hearing on an alleged violation and, upon finding a violation, imposes sanctions.

Primary Caregivers

A primary caregiver is defined by the constitutional amendment as a person who has significant responsibility for managing the well-being of a medical marijuana patient. A primary caregiver may be a parent of a child who is on the medical marijuana registry, an advising caregiver who advises a patient on how to use and dose medical marijuana, a transporting primary caregiver who purchases and transports medical marijuana from a medical marijuana center for a homebound patient, or a cultivating caregiver who grows medical marijuana for a patient. A primary caregiver serves no more than five patients on the

registry at one time, unless the department grants the primary caregiver a waiver to serve more patients.

A primary caregiver must register the medical marijuana cultivation site and all patient identification numbers with the medical marijuana state licensing authority. The information regarding a primary caregiver cultivation location is confidential, except that a local government or law enforcement agency can verify the legality of a cultivation operation. Since the use, possession, and cultivation of marijuana is illegal under state law, the constitutional amendment provides an affirmative defense or an exception to criminal charges related to the possession or cultivation by a primary caregiver. A transporting or cultivating caregiver must register with the marijuana licensing authority and provide patient registry numbers, extended plant counts, and other relevant information that would allow law enforcement to verify with the marijuana licensing authority that the primary caregiver is complying with medical marijuana laws. A person may not register as a primary caregiver if the person is licensed as a medical marijuana business or works for a licensed medical marijuana business. A cultivating primary caregiver may not grow more than 36 plants at a time unless the primary caregiver has one or more patients who have extended plant counts based on medical necessity. A primary caregiver in all circumstances may not grow more than 99 plants.

State Health Agency

The constitutional amendment charges the state health agency, designated as the department by the Governor, with overseeing the medical marijuana program and creating a confidential database of registry card-holding medical marijuana patients. The department sets the application fee to cover the costs of administering the medical marijuana program. The department has authority to promulgate rules for the medical marijuana program, including rules to:

- Implement the confidential registry;
- Create an application process and verify applications;
- Issue medical marijuana registry cards;
- Require certain documentation from physicians who recommend medical marijuana;
- Impose sanctions for physicians who violate the act;
- Determine claims of indigence related to the application fee;
- Prescribe communications with law enforcement regarding the registry;
- Create the process for adding other debilitating conditions that would qualify a patient to seek a medical marijuana registry card.
- Establish a waiver process to allow a homebound patient to have a primary caregiver transport the patient's medical marijuana from a licensed medical marijuana center;
- Define what constitutes significant responsibility for managing the well-being of a patient; and

- Establish grounds and a procedure for a patient to change the patient's primary caregiver.

The department shall develop and maintain a marijuana laboratory testing reference library. The library must contain a library of methodologies for marijuana testing in the areas of potency, homogeneity, containments, and solvents consistent with the statutory laboratory requirements.

Industry Regulation

Licensing: Licensing began on August 1, 2010 and the latest sunset review extended the regulations until September 1, 2028

The department of revenue houses the marijuana state licensing authority. The state licensing authority conducts the licensee background checks, licenses medical marijuana businesses, and enforces medical marijuana laws and regulations. Many of the functions and duties of the state licensing authority are similar to the state licensing authority for alcoholic beverages. The licensing authority sets the fees for the licenses it issues.

Local government issues: A local government may ban the sale, distribution, cultivation, and dispensing of medical marijuana by a majority vote of its governing board or a majority vote of its citizens.

Licensed businesses A licensed medical marijuana store ("store") sells medical marijuana, immature medical marijuana plants, and medical marijuana-infused products to patients. A store must verify the registry card of each purchaser prior to purchase and record each transaction in the seed-to-sale tracking system. A store can sell medical marijuana that it cultivates itself under a cultivation license or purchase medical marijuana from a licensed cultivator or another licensed medical marijuana center. A store can sell packaged and labeled medical marijuana and medical marijuana-infused products purchased from an infused-product licensee. A medical marijuana store may only sell 8 grams of medical marijuana concentrate per day to a patient, unless the patient is 18 to 20 years old then the limit is 2 grams with some exceptions.

A licensed medical marijuana cultivation facility cultivates medical marijuana for sale and distribution to licensed medical marijuana stores, medical marijuana products manufacturer licensees, or other medical marijuana cultivation facilities. A medical marijuana cultivation facility can receive retail marijuana from a co-located retail marijuana cultivation facility with at one identical controlling beneficial owner and sell it as medical marijuana.

A licensed medical marijuana-infused-products manufacturer ("manufacturer") produces medical marijuana-infused products to sell to stores. A manufacturer may sell its products to any store. All infused products must be sealed and labeled. A manufacturer with a cultivation license may not sell any cultivated medical marijuana that is not processed into medical marijuana-infused products.

A licensed medical marijuana testing facility performs testing and research on medical marijuana and medical marijuana products for medical marijuana licensees.

Unlawful Acts

Section 18-18-406.3, C.R.S., creates specific unlawful acts related to medical marijuana. These acts include:

- Fraudulent activities to gain a medical marijuana registry card;
- Fraudulent use or theft of another's medical marijuana registry card;
- Fraudulent production or alteration of a medical marijuana registry card; and
- The release of any confidential information from the medical marijuana registry.

Each unlawful act is a class 2 misdemeanor.

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