

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. 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;
- has received a recommendation from a physician stating that he or she suffers from the debilitating 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.

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 his or her 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.

The constitutional amendment specifies that 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 his or her registry identification card or his or her application if the application has not been processed. 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 a patient's possession or use of medical marijuana.

Physicians

Under the constitutional amendment, physicians have the authority to recommend medical marijuana to patients suffering from debilitating conditions. A physician must be in good standing to practice medicine. A bona-fide physician-patient relationship must exist before a physician recommends medical marijuana. The bona-fide relationship must include a counseling or treatment relationship, and the physician must consult with the patient in person concerning his or her debilitating medical condition before the physician makes a medical marijuana recommendation. After a physician recommends the use of medical marijuana, he or she certifies the debilitating medical condition that forms the basis of the recommendation and other information to the department of public health and environment. To prevent questionable recommendations, a physician is prohibited from receiving payment from or offering payment to a primary caregiver, distributor, or any other provider of medical marijuana. Since the use, possession, and cultivation of marijuana is illegal under state law, 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 of public health and environment. 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 of public health and environment 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. The primary caregiver assists the patient by providing or cultivating medical marijuana and may care for the patient's medical or other needs. A primary caregiver serves no more than five patients on the registry at one time, unless the department of public health and environment grants the primary caregiver a waiver to serve more patients.

A primary caregiver must register his or her 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.

State Health Agency

The constitutional amendment charges the state health agency, designated as the department of public health and environment ("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 can 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; and
- Create the process for adding other debilitating conditions that would qualify a patient to seek a medical marijuana registry card.

Based on the 2010 legislation, the department must promulgate new rules to:

- 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 and
- Create a sales tax exemption for indigent patients.

And the department may promulgate new rules related to:

- What constitutes significant responsibility for managing the well-being of a patient;
- A primary caregiver registration form;
- What constitutes written documentation; and
- Grounds and a procedure for a patient to change his or her primary caregiver.

Industry Regulation

Licensing Licensing began on August 1, 2010. A business that did not apply for licensing prior to August 1, 2010, had to wait to apply for licensing until July 1, 2012. The licensing provisions are repealed July 1, 2015. Prior to the repeal, the department of regulatory agencies must review the licensing provisions.

The department of revenue houses the medical marijuana state licensing authority. The state licensing authority conducts the licensee background checks, licenses medical marijuana businesses after the business receives a local license, 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 center ("center") sells medical marijuana, immature medical marijuana plants, and medical marijuana-infused products to patients. A center must verify the registry card of each purchaser. A center can only sell medical marijuana it cultivates itself or medical marijuana it purchases from another center amounting to less than 30% of its inventory. A center can sell packaged and labeled medical marijuana and medical marijuana-infused products purchased from an infused-product licensee.

A licensed medical marijuana-infused-products manufacturer ("manufacturer") produces medical marijuana-infused products to sell to centers for retail sale. A manufacturer may produce infused products from its own cultivated medical marijuana, if it has an optional cultivation license, or use medical marijuana from up to five different medical marijuana centers in the production of one product. A manufacturer may only have 500 plants on site unless it is granted a waiver by the state licensing authority for more. A manufacturer may sell its products to any center. 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.

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 1 misdemeanor.

Tax Revenue

The first \$2 million of sales tax revenue generated by the sale of medical marijuana is diverted from the state general fund as follows: Half of the money is appropriated to the circle program at the Colorado mental health institute at Pueblo; and the other half is appropriated to the department of health care policy and financing for substance abuse treatment screening and referral.

LAST REVISED: 08/01/2012
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