

Proposed Medical Marijuana Caregiver Licensing Board (MMCLB)

The Work Group, impaneled by the Children, Families, Health and Human Services Interim Committee, spent a great deal of time discussing how to best regulate and control medical marijuana in Montana. Lewis Smith, Powell County Attorney submitted a local government perspective on June 28th supporting the need for a dedicated licensing board for caregivers in Montana. With the nuances of this new industry, regulation and oversight are essential. The following recommendation to the Subcommittee has taken into consideration the positions of Mr. Smith, the consensus opinion of the Work Group, the recommendations and concerns of Mike Batista and the Department of Justice, Law Enforcement officials' concerns and the opinions of the members of the Interim Committee. We have also had discussions with the attorney for the State Department of Agriculture.

Currently, the Department of Public Health and Human Services (DPHHS) has the responsibility of licensing both patients and caregivers. If the responsibility of licensing caregivers is moved to a new board, DPHHS would only be responsible for the licensing of patients thereby significantly reducing the application processing time and would permit that department to better focus on patient license issues.

Once a patient has been approved by DPHHS, the MMCLB would receive the paper work for the new caregiver. The MMCLB would review and approve the new caregiver status.

There will need to be a fully integrated database of patients and caregivers so that both DPHHS and the new regulatory board can have access along with Law Enforcement and inspection entities. This access would also solve the problem of law enforcement concerns of being able to easily identify suspicious or illegal activity. Some of the following recommendations would be legislative in nature, others would be implemented by administrative rule by the new board. The MMCLB should address the following concerns by all representative stakeholder groups:

- Identification and monitoring of grow facilities
- Methodology to address potential legal medicine ending up on the black market
- Tracking of plants, plant products, and usable medicine from seed/clone to patient delivery
- Quality of patient care by caregivers
- Inventory & quality control of medicine products
- Caregiver/Caregivers Issues - Complaint & Ethics Resolution Board
- Training & Continuing Education Requirements, Execution & Tracking

The responsibilities of the MMCLB should include the following:

1. To sanction and regulate caregiver education, insuring that caregivers are professional, properly educated and trained, and insure that they adhere to basic levels of professional conduct and ethics.
2. To conduct a 50 state background check and, based on legislative direction, determine who may be restricted from being licensed as a caregiver or subsequently remove the licenses of existing caregivers who it is learned have prior convictions.
3. To set growing standards with the assistance the Department of Agriculture to insure that all medicine is grown with appropriate protocols and in an acceptable manner.

4. To handle the patients desire to change caregivers. It is recommended that the patient identify why they wish to change caregivers so that appropriate action may be taken if the change is due to inappropriate business practices or not meeting the mandatory standard of care that will be established by the Board. There would be a fee charged for this change to be incurred by the new Caregiver.
5. To establish and collect licensing fees. Fees would be based on the number of patients registered to a particular caregiver with additional licensing and fees required per grow facility and dispense location. The Fee structure should be sufficient to fund the new Board and be in line with other license costs in the state.
6. To establish a closed loop tracking system for all caregivers which will be a full business POS (point of sale) system and agricultural plant tracking and product storage methodology.
7. To establish inspection guidelines for grow facilities and product distribution points and sanction caregiver inspection teams to include legal compliance, health & safety, grow protocols and product quality.

Once testing is more commonplace (estimate 24 months) medicine may be graded based on Cannabinoid make-up, differentiating different strains for different medical conditions. This will lead to more effective labeling of medicine for the patients' benefit. This is a longer term solution and is not practical today, but will be in the estimated 24 months and could be addressed by the new Board at that time.

8. To establish a protocol for patient, caregiver and public complaints. This would include complaints regarding caregiver Standard of Care and product diversion.
 9. To establish a protocol for caregivers to report patients that may be selling medicine to non-patients to DPHHS to investigate potential revocation of the patient's license.
 10. To design and implement a paper license that displays the licensing level (as outlined below in licensing levels), license number and the number of patients registered to that caregiver. The caregiver would be responsible for logging into the database at the end of each month and verifying the number of patients registered to him/her and printing the month-end license list. The caregiver database would be available to law enforcement 24/7 so that they can always know the current number of patients for a particular caregiver.
- The patient card would no longer have the caregiver's name on it, so that when a change of caregiver is made, no new patient card need be issued. It is the responsibility of the caregiver to ONLY serve the patients to whom they are registered.
11. To register grow facilities with an online interactive database so caregivers can submit monthly updates on plant count and existing inventory. The number of plants and legal inventory should be based on a developed guideline rather than by defined statute. This gives the caregiver the opportunity within a given month both add and subtract patients without affecting plant count or inventory levels and without the need to destroy or otherwise distribute excess product.
 12. Edible products (medibles) require new definitions that are consistent with the actual THC and other Cannabinoid content. All such products should have appropriate nutritional and ingredient labels which should be regulated by the new Board. New research is being

conducted to assist in the formulation of complete labeling.

Recommended Board Membership

The recommendation is that a board of 11 be established including patient, caregiver/grower, medical, law enforcement and agricultural representation. The usual number of members is 5 - 9, but a board of 11 is recommended due to the unusual nature of this Board. It is essential that the Board makeup be representative but not stacked with any conflict of interest.

Important considerations for membership:

- No conflict of interest between any member caregivers or patients.
- Representation of different size caregivers and distribution models
- Medical representative fully supports the use of medical marijuana
- Each member should be a US Citizen and a resident of the State.
- Member patients & caregivers must have current licenses to serve
- Member caregivers may not be the caregiver of a patient Board member OR in a business affiliated with another member caregiver.

The patient members may not be affiliated either directly (as patient) or indirectly (as patient of a business affiliate of another caregiver Board member). One of the Patient members may also be a caregiver.

The recommended board of 11 should include:

- 2 Patients with a Medical Marijuana license that has been active for a minimum two consecutive years.
- 1 Physician currently licensed who has made at least 20 medical marijuana recommendations over the preceding two years.
- 1 Law Enforcement/DOJ or other legal official
- 1 representative from the State Department of Agriculture
- 1 Caregiver currently licensed with a minimum of two years of caregiver experience who has maintained a minimum of 50 Patients for the preceding two years.
- 1 Caregiver currently licensed with a minimum of two years of caregiver experience who has maintained a minimum of 15 but less than 50 Patients for the preceding two years.
- 1 Caregiver currently licensed with a minimum of two years of caregiver experience who has maintained a minimum of 1 but less than 15 Patients for the preceding two years.
- 1 Caregivers currently licensed with a minimum of two years of caregiver experience with no licensed patient requirement.
- 1 Store Front "Dispensary" Owner currently licensed with a minimum of two years of caregiver experience.
- 1 Public Member - Non Patient, Non Caregiver, Non Medical Practitioners, Non Law Enforcement

Proposed License Fee Structure

The following licensing schedule is submitted. Licensing would be annually for all caregivers. Licensed caregivers will be required to complete continuing education courses (CEUs) in order to maintain good standing. Licensees will be required to submit proof of completion of required CEUs for license renewal. The license cost structure is based in part on raising the necessary funds to operate the Board while keeping license costs somewhat in line with other licenses in the state.

- \$25.00 Conditional Caregiver License - This would be required in advance of any new caregiver being permitted to become a caregiver. A basic examination would be required for all new caregivers PRIOR to being able to be licensed caregiver. Existing caregivers at the time of implementation would be grandfathered by license but would be required to pay the initial license fee immediately. Within 120 days of receiving a Conditional Caregiver License, applicants must complete the required 24 hours of continuing education. Proof of completion of the required coursework must be submitted to the Board.
- \$25.00 Caregiver 1 License - issued following submission of 24 hours of continuing education. This license is available to caregivers with a maximum of 5 patients.
- \$50.00 Caregiver 2 License - issued following submission of 24 hours of continuing education. This license is available to caregivers with a minimum of 6 patients and a maximum of 15 patients.
- \$100.00 Caregiver 3 License - issued following submission of 24 hours of continuing education. This license is available to caregivers with a minimum of 16 patients and a maximum of 30 patients.
- 250.00 Caregiver 4 License - issued following submission of 24 hours of continuing education. This license is available to caregivers with a minimum of 31 patients with no maximum.
- \$250.00 Store Front/Dispensary License - per location
- \$200.00 Grow Facility 1 License - Each Grow facility representing more than 6 patients or 36 plants but less than 31 patients.
- \$400.00 Grow Facility 2 License - Each Grow facility representing more than 30 patients or 180 plants but less than 100 patients
- \$600.00 Grow Facility 3 License - Each Grow facility representing more than 100 patients or 600 plants.
- \$25.00 Non Patient/Non Caregiver Participation License - Available for individuals working in the business but who are neither patients nor caregivers.
- \$25.00 Caregiver Change Fee - Each time a patient changes Caregiver, the new Caregiver will be charged a \$25 fee.

Caregivers and patients may work as a collective for the purposes of grow facilities. The facility manager will be responsible for the grow facility license and MUST be a resident licensed caregiver. The endorsement of a collective concept between caregivers and/or patients helps to insure that patients can receive the best medical strain for their particular need. The tracking of product solves any potential issue of diversion.

Based on current caregiver count as of June 30, 2010, an estimated number of different grow facilities and estimated number of store front/dispensaries, the initial annual fees generated would equal approximately \$297,550.

Fee Basis:

License	Costs	Participant/Location	Extension
Conditional License	\$25.00	3,940	\$ 98,500
Caregiver 1 License	\$25.00	3,276	\$ 81,900
Caregiver 2 License	\$50.00	440	\$ 22,000
Caregiver 3 License	\$100.00	104	\$ 10,400
Caregiver 4 License	\$250.00	120	\$ 30,000
Store Front/Dispensary	\$250.00	40	\$ 10,000
Grow Facility 1 License	\$200.00	30	\$ 6,000
Grow Facility 2 License	\$400.00	20	\$ 8,000
Grow Facility 3 License	\$600.00	20	\$ 12,000
Non Patient/Non Caregiver	\$25.00	250	\$ 6,250
Caregiver Changes	\$25.00	500	\$12,500

Penalties

- Failure to register an existing Grow Facility within 60 days of notice given to all Caregivers of new Board regulations- \$1,000
- Failure to register an existing Grow Facility within 120 days of notice given to all Caregivers of new Board regulations- \$2,500
- A grow facility not registered after 120 days will be considered an illegal grow and subject to State and/or Federal prosecution.
- Caregiver found selling to NON Patients or unauthorized Caregiver based on card count, will result in lost licensure as a Caregiver.