

Emerging Issue: Medical Marijuana

Variations Among State Laws

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for the CFHHS Subcommittee on Medical Marijuana
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Background

Fourteen states have authorized the cultivation, possession, sale, and use of marijuana for medical purposes. Most of the laws came about through voter-passed initiatives. Many of the laws — including Montana's — were supported by the Marijuana Policy Project (MPP), a national group that endorses efforts to change state laws and has developed model legislation to do so.¹ As a result, the laws in many states use similar terminology and contain many similar provisions.

However, some states have modified the voter-passed initiatives over the years. In addition, some states that have passed more recent legislation are using new versions of model legislation or have modified provisions that have created questions in other states.

This briefing paper highlights some of the different approaches among the states on items about which subcommittee members have expressed interest or concern. It also provides information on how each topic is handled in the latest version of the MPP's model legislation.

Adding Medical Conditions

Montana is one of three states that does not have a formal process for requesting and considering changes to the list of debilitating medical conditions for which marijuana use is allowed. The work group that reviewed the Montana Medical Marijuana Act suggested that such a process be established. In general, the 11 other medical marijuana states use a process that:

- requires a person to make a request and submit evidence to support the request;
- provides for a public hearing process;
- uses an advisory board to periodically review the requests and make recommendations to the director of the agency in charge of the program; and
- allows the department director to make the final determination.

The MPP model legislation contains a similar process for adding medical conditions to the list.

¹"Our History," *Marijuana Policy Project* [on-line], available at <http://www.mpp.org/about/history.html>, accessed July 19, 2010.

Chronic Pain

Most states allow the use of medical marijuana when a debilitating medical condition or its treatment result in severe and/or chronic pain. But some states have additional requirements for this condition.

- Maine allows medical use for a condition or treatment that produces "intractable pain, which is pain that has not responded to ordinary medical or surgical measures for more than 6 months."
- New Jersey allows use if a patient suffers from severe or chronic pain from one of the following medical conditions or its treatment: cancer, AIDS, or positive status for HIV.
- Rhode Island allows use for "severe, debilitating, chronic pain" caused by a chronic or debilitating disease or medical condition or its treatment.
- Vermont allows use for a chronic, debilitating disease, medical condition, or treatment that produces severe pain if that pain is "severe, persistent, and intractable" and if reasonable medical efforts have been made to relieve the symptoms over a reasonable amount of time, without success.
- Washington allows use for "intractable pain" and limits that condition to "pain unrelieved by standard medical treatments or medications."

MPP's model legislation uses the term "severe, debilitating pain."

Length of Registrations

The work group reviewing the Medical Marijuana Act suggested that the interim committee look at whether registry cards should be valid for longer or shorter time periods than the current 1-year period. Work group members suggested that some patients should be able to renew their cards less frequently, while physicians should be able to recommend more frequent renewal periods for other patients. The Board of Medical Examiners has recommended that physicians be allowed to recommend medical use for less than 1 year and to revoke written certifications.

Registry cards in all but three of the 14 medical marijuana states are valid for 1 year. The cards are valid for 2 years in New Jersey and Rhode Island, while Washington does not register patients or issue cards. Instead, Washington patients use the written certification from the physician if questioned about their marijuana possession or use; the certification expires only if the physician includes an expiration date on the document.²

² "Frequently Asked Questions about Medical Marijuana in Washington State," *Washington Department of Health* [on-line], available at <http://www.doh.wa.gov/hsqa/medical-marijuana/FAQmore.htm#Register>, accessed Aug. 4, 2010.

The MPP model legislation generally allows for 1-year cards but allows a health care practitioner to specify an earlier expiration date for the card.

Minors

In most states, minors may use medical marijuana if a parent or legal guardian agrees to the use and agrees to act as the child's caregiver. However, three states require additional steps before a minor may use medical marijuana.

- Colorado requires that two physicians diagnose a minor's debilitating medical condition. In addition, all of the minor's parents who live in Colorado must consent to the medical use, and the parent submitting the application must have his or her signature notarized.
- Maine requires that applications for minors who are not in hospice care be approved by the Commissioner of Health and Human Services, after confirmation from a pediatrician and a psychiatrist who have examined the minor or the minor's medical records that medical use of marijuana would be appropriate.
- Michigan requires that a minor have written certification from two physicians.

The MPP model legislation essentially mirrors current Montana law.

Physician Requirements

Several states have included language in their laws that place requirements on physicians who write recommendations for a patient's medical use of marijuana.

- Alaska requires that the physician statement includes verification that the physician personally examined the patient within the context of a bona fide physician-patient relationship. The examination must have occurred within the 16 months immediately preceding the patient's application for a registry card.
- Colorado and Maine require that the physician be in good standing and hold a valid Drug Enforcement Administration license to prescribe drugs. In addition, the Colorado Legislature this year placed several restrictions on a physician's financial relationship with individuals or businesses that provide medical marijuana.
- New Jersey defines a bona fide physician-patient relationship as one in which the doctor has "ongoing responsibility for the assessment, care and treatment of a patient's debilitating medical condition." The physician also must be the person's primary care doctor, hospice physician, or a doctor responsible for the ongoing treatment as long as that treatment is not limited to providing the written certification for a registry card.

- Oregon has proposed an administrative rule that would require the state to contact any doctor who is listed as the attending physician for more than 450 people and either have the doctor provide:
 - ▶ information on each new patient over the 450 limit, including patient chart notes;
 - ▶ a letter from the clinic at which the doctor provides care, requesting an exemption from the requirement and documenting that the clinic has a system for ensuring that medical records are reviewed and that it provides follow-up care; or
 - ▶ a written statement explaining why the physician should be exempted from the requirement. Reasons for exemption include that the physician has a disproportionately high number of patients with qualifying conditions or serves as a consulting physician for other health care providers who refer patients requesting medical marijuana certification.
- Vermont defines a bona fide physician-patient relationship as one involving a treating or consulting relationship of at least 6 months during which the doctor has completed a full assessment of the patient's medical history and current medical condition, including a personal physical exam.

The MPP model legislation would allow any health care practitioner with authority to prescribe drugs to humans to provide a written certification for medical marijuana. It also states that the law does not "release a practitioner from the duty to exercise a professional standard of care for evaluating a patient's medical condition."

Plant Definitions and Amounts

Interested parties have suggested that Montana law include a definition for "plant" and have suggested varying options. Advocates have stressed the need to recognize that only the female plants yield usable marijuana, and the gender of a plant is not readily apparent until it begins flowering.

Nine states include some type of definition of plant in either statute or in administrative rule, but the approaches vary.

- Five states make reference to mature and immature plants. They generally define mature plants as those that are flowering, with buds readily observed by unaided visual examination. Immature plants are generally defined as those that have not yet flowered and have no observable buds. The allowable limits for the various types of plants are:
 - ▶ 3 mature plants and 6 total plants in Alaska;
 - ▶ 6 mature and 12 immature plants per patient and caregiver in California;
 - ▶ 3 mature and 4 immature plants total for a patient and the patient's caregiver in Hawaii and Nevada; and
 - ▶ 12 mature plants and 12 immature plants for a patient and the patient's caregiver in Rhode Island. Caregivers other than dispensaries are limited to a total of 24 mature plants.

- Three states define a mature plant as a female plant greater than 12 inches in height and 12 inches in diameter. They also define seedlings as any plant that has no flowers, is less than 12 inches in height, and is less than 12 inches in diameter. The allowable limits in those states are:
 - ▶ 6 mature plants for either the patient or the caregiver in Maine;
 - ▶ 4 mature plants and 12 seedlings collectively for a patient and caregiver in New Mexico; and
 - ▶ 6 mature plants and 18 seedlings for either the patient, caregiver, or grower in Oregon.
- Washington defines a plant as any marijuana plant in any stage of growth. It allows a patient and a designated caregiver to each possess 15 plants.

The MPP model legislation defines a seedling as a plant with no flowers that is less than 12 inches in height and less than 12 inches in diameter. It recommends that a patient be allowed to possess 12 plants and 12 seedlings and that a caregiver be allowed to possess that number of plants and seedlings for each patient who has named the person as a caregiver.

Usable Marijuana Definitions and Amounts

Some medical marijuana advocates in Montana have suggested that the word "dried" be changed to "cured" in the definition of usable marijuana. In addition, a number of people have suggested the amount of usable marijuana should be revised to reflect the different types of marijuana products available for medical use.

Ten of the 14 medical marijuana states, including Montana, currently define usable marijuana in much the same way — as the dried leaves and flowers of the marijuana plant and any mixture or preparation of those leaves and flowers. Oregon has defined usable marijuana to include the resin of the plant, while California law allows only the dried leaves and flowers of a plant to be considered toward the allowable amount. Four of the states don't specify whether the usable parts of the marijuana plant are dried, cured, or in any other form.

No state has allowable amounts that vary based on the form in which the marijuana is provided, such as tinctures, edible products, or hashish. Instead, they generally use a term similar to Montana's "usable marijuana" and allow possession of the following amounts:

- **1 ounce:** Montana allows a patient to possess 1 ounce and a caregiver to possess 1 ounce for each patient for whom the person has been named a caregiver. Alaska and Nevada allow the patient and caregiver to collectively possess 1 ounce.
- **2 ounces:** Colorado and Vermont allow a patient and caregiver to collectively possess 2 ounces. In New Jersey, a patient or the patient's caregiver may obtain from a dispensary a maximum of 2 ounces for the patient over a 30-day period.
- **2.5 ounces:** Maine, Michigan, and Rhode Island allow a patient to possess 2.5 ounces

and a caregiver to possess 2.5 ounces for each patient who has named that person as a caregiver. A dispensary in Maine or Rhode Island may provide a maximum of 2.5 ounces during a 15-day period to either the patient or the patient's caregiver.

- **3 ounces:** Hawaii allows a patient and caregiver to jointly possess up to 3 ounces.
- **6 ounces:** New Mexico allows a patient and the patient's caregiver to collectively possess 6 ounces as "an adequate supply" that could ensure the uninterrupted availability of medical marijuana for three months.
- **8 ounces:** California allows a qualified patient or a caregiver to possess up to 8 ounces per qualified patient.
- **24 ounces:** Oregon allows a patient, the patient's caregiver, and the patient's grower to possess a total of 24 ounces collectively. Washington allows a patient and a designated caregiver to each possess up to 24 ounces per patient. In Washington, this amount is considered a 60-day supply.

The MPP model legislation allows a patient to possess 6 ounces of usable marijuana and allows a caregiver to possess 6 ounces for each patient to whom the caregiver is connected. It specifically excludes the weight of any non-marijuana ingredients added to a product.

Reciprocity Provisions

Four states, including Montana, recognize medical marijuana cards issued by other states. Interested parties on all sides of the medical marijuana issue have suggested that Montana's reciprocity law should be clarified. General agreement exists that the law should be amended to specify that residents of other states should abide by the limits set in Montana law.

In addition, medical marijuana advocates have suggested amending Montana's law to allow Montana caregivers to provide medical marijuana to out-of-state cardholders for a specified period of time. This would be a departure from the current practice in which a caregiver may provide marijuana only to those Montana patients who have designated that person as their caregiver.

Montana, Michigan, and Rhode Island have similar provisions allowing a registry card issued by another state to have "the same force and effect" as a card issued by the appropriate agency in their states. Michigan and Rhode Island, however, include jurisdictions other than the states, such as the District of Columbia or a territory. None of these three states specify how cardholders from other states would obtain medical marijuana for their use or how long a person may be in the state without obtaining a card from that state.

Maine, on the other hand, limits a person from another state to using medical marijuana for 30 days without obtaining a registry card from Maine. In addition, an out-of-state cardholder may not obtain medical marijuana in Maine based on their out-of-state card.

The MPP model legislation prohibits an out-of-state cardholder from growing marijuana in the state the cardholder is visiting. It also places a 30-day limit on the reciprocity provision.

Smoking in Public

Almost all of the states with medical marijuana laws prohibit smoking or use of medical marijuana in general public view. Only Montana, California, and New Jersey have no specific prohibition on smoking marijuana in a place generally used by the public.

- Alaska, Colorado, Hawaii, Nevada, and Washington prohibit medical use in plain view of the general public or in a place open to the general public. In Washington, any use or display in a manner or place open to general public view is a misdemeanor crime.
- Maine, Michigan, Rhode Island, Vermont, and Washington prohibit smoking in any public place, while New Mexico and Oregon prohibit any medical use in a public place. Medical use typically includes not only smoking, but also ingestion in other forms.

In addition, Rhode Island prohibits smoking in a place "where exposure to the marijuana smoke significantly adversely affects the health, safety, or welfare of children." And four states — Alaska, Colorado, Hawaii, and Vermont — also prohibit use "that endangers the health or well-being of any person."

The MPP model legislation prohibits smoking "in any public place."

Other Provisions of the MPP Model Legislation

The MPP model legislation also touches on areas of law not currently covered by Montana's Medical Marijuana Act or laws in other states. Two of the most significant sections deal with additional protections for people involved with medical marijuana and specific acts that are not required or prohibited by public or private entities.

The model legislation addresses issues raised about use of medical marijuana by employees and tenants through a section entitled "*Discrimination Prohibited*." This section includes provisions that:

- prevent a school from refusing to enroll a student or a landlord from refusing to lease a property to a person based solely on the person's status as a patient or caregiver, unless doing so would cause the school or landlord to be penalized by federal law or regulation;
- require a health care facility to consider medical marijuana to be the equivalent of the authorized use of any other medication and not be used as a reason to disqualify a person from needed medical care, including organ transplants;
- prevent employers from discriminating in hiring, termination, or any term of employment

if the discrimination is based on either the person's status as a cardholder or a patient's positive drug test for marijuana, unless the patient used, possessed, or was impaired by marijuana while on the work premises or during work hours; and

- deny a person custody or visitation with a child unless the person's actions in relation to marijuana created an unreasonable danger for the child.

In a section entitled "*Acts Not Required, Acts Not Prohibited*," the model legislation includes provisions that:

- allow any person or establishment to prohibit smoking of marijuana on or in the property; and
- allow an employer to discipline an employee for ingesting marijuana in the workplace or working while under the influence of marijuana.

The table on the following pages provides the statutory or administrative rule citations for the information contained in this briefing paper.

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STATE LAW AND ADMINISTRATIVE RULE CITATIONS

Topic	State	Statute	Administrative Rule
Adding Medical Conditions	Alaska	AS 17.37.060	
	Colorado	Article 18, Section 14(9), Colorado Constitution	Regulation 6.D, 5 CCR 1006-2
	Hawaii	HRS §329-121	
	Maine	Title 22, Chapter 558-C, §2424(2), MRS	10-144 CMR Chapter 122, Section 3.2
	Michigan	MCL 333.26425(a)	
	Nevada	NRS 453A.710(1)	NAC 453A.200-240
	New Mexico	26-2B-6, NMSA	
	Oregon	ORS 475.334	
	Rhode Island	§21-28.6-5(a), General Laws of Rhode Island	
	Vermont	Title 18, Chapter 86, §4473(b)(5)(A), Vermont Laws	
	Washington	RCW 69.51A.070	
	MPP Model State Bill	Section 7	
	Chronic Pain	Maine	Title 22, Chapter 558-C, §2422(2)(B), MRS
New Jersey		§24:6I-3, NJPS	
Rhode Island		§21-28:6-3(3)(ii), General Laws	
Vermont		Title 18, Chapter 5, Chapter 86, §4472(2)(B)	
Washington		RCW 69.51A.010(4)(b)	
MPP Model State Bill		Section 3(c)(2)	
Length of Registrations	New Jersey	§24.6I-4(a), NJPL	
	Rhode Island	§21-28:6-6(e), General Laws of Rhode Island	
	MPP Model State Bill	Section 12(b)(2)	

Topic	State	Statute	Administrative Rule
Minors	Colorado	Article 18, Section 14(6), Colorado Constitution 25-1.5-106(6), CRS	
	Maine	Title 22, Chapter 558-C, §2425(2)(C), MRS	
	Michigan	MCL 333.26426(b)(2)	
	MPP Model State Bill	Section 10(b)	
Physician Requirements	Alaska	AS. 17.37.010(c)(1)(A) and (r)	
	Colorado	25-1.5-106(1)(c)(III) and (3)(d), CRS	
	Maine	Title 22, Chapter 558-C, §2422(7), MRS	
	New Jersey	§24:6I-3, NJPL	
	Oregon		Proposed Rule 333-008-0060(5)
	Vermont	Title 18, Chapter 86, §4472(1), Vermont Laws	
	MPP Model State Bill	Section 4(g)	
Plant Definitions and Amounts	Alaska	Definition and Amount: AS 17.37.040(a)(4)(B)	
	California	Definition: Health and Safety Code §11362.77(d) Amount: Health and Safety Code §11362.77(a)	
	Colorado	Definition: Article 18, Section 14(4)(a)(II), Colorado Constitution Amount: Article 18, Section 14(4)(a)(II), Colorado Constitution	
	Hawaii	Definition and Amount: HRS §329-121	§23-202-2, Hawaii Administrative Rules
	Maine	Amount: Title 22, Chapter 558-C, §2423(1)(B) and (2)(B), MRS	Definition: 10-144 CMR Chapter 122, Sections 1.17 and 1.33
	Michigan	Amount: MCL 333.26424(a) and (b)(2)	
	Nevada	Amount: NRS 453A.200(3)(b)(2) and (3)	Definition: NAC 453A.080
	New Mexico		Definition: 7.34.3.7.S and KK, NMAC Amount: 7.34.3.7.B, NMAC
	Oregon	Definition: ORS 475.306(3) Amount: ORS 475.320(1)(a)	Definition: 333-008-0010(11) and (22), OAR

Topic	State	Statute	Administrative Rule
Plant Definitions and Amounts	Rhode Island	Definition: §21-28.6-3(6) General Laws of Rhode Island Amount: §21-28.6-4(a), (c), and (d), General Laws	Definition: R21-28.6, Sections 1.7 and 1.16, Rules and Regulations of the MMP
	Vermont	Amount: Title 18, Chapter 86, §4472(5), Vermont Laws	
	Washington	Amount: RCW 69.51A.040(3)(b)	Definition: 246-75-010(2)(b), WAC Amount: 246-75-010(3)(a), WAC
	MPP Model State Bill	Definition: Section 3(p) Amount: Section 4(a)(2) and (4)(b)(1)(B)	
Usable Marijuana Definitions and Amounts	Alaska	Definition: AS 17.37.070(12) Amount: AS 17.37.040(a)(4)(A)	
	California	Definition: Health and Safety Code §11362.77(d) Amount: Health and Safety Code §11362.77(a)	
	Colorado	Definition: Article 18, Section 14(1)(i), Colorado Constitution Amount: Article 18, Section 14(4)(a)(I), Colorado Constitution	
	Hawaii	Definition and Amount: HRS §329-121	
	Maine	Definition: Title 22, Chapter 558-C, §2422(14), MRS Amount: Title 22, Chapter 558-C, §2423(1)(A) and (2)(A), MRS	
	Michigan	Definition: MCL 333.26423(j) Amount: MCL 333.26424(a) and (b)(1)	
	Nevada	Definition: NRS 453A.160 Amount: NRS 453A.200(3)(b)(1)	
	New Jersey	Definition: §24:6I-3, NJPL Amount: §24:6I-10, NJPL	
	New Mexico		Definition: 7.34.3.7.MM, NMAC Amount: 7.34.3.7.B, NMAC
	Oregon	Definition: ORS 475.302(11) Amount: ORS 475.320(1)(a)	
	Rhode Island	Definition: §21-28.6-3(12) General Laws of Rhode Island Amount: §21-28.6-4(a) and (c)	
	Vermont	Definition: Title 18, Chapter 86, §4472(9), Vermont Laws Amount: Title 18, Chapter 86, §4472(5), Vermont Laws	

Topic	State	Statute	Administrative Rule
Usable Marijuana Definitions and Amounts	Washington	Amount: RCW 69.51A.040(3)(b)	Definition: 246-75-010(2)(d), WAC Amount: 246-75-010(3)(a), WAC
	MPP Model State Bill	Definition: Section 3(q) Amount: Section 4(a)(1) and (4)(b)(1)(A)	
Reciprocity Provisions	Maine	Title 22, Chapter 558-C, §2423(A)(13) and (D), MRS.	
	Michigan	MCL 333.26424(j)	
	Rhode Island	§21-28.6-4(k), General Laws of Rhode Island	
	MPP Model State Bill	Section 4(d) and (e)	
Smoking in Public	Alaska	AS 17.37.040(a)(2)	
	Colorado	Article 18, Section 14(5)(a)(II), Colorado Constitution	
	Hawaii	HRS §329-122(c)(2)(E)	
	Maine	Title 22, Chapter 558-C, §2426(1)(C)(2), MRS	
	Michigan	MCL 333.26427(b)(3)(B)	
	Nevada	NRS 453A.300(1)(d)(1)	
	New Mexico	26-2B-5(A)(3)(d), NMSA	
	Oregon	ORS 475.316(1)(b)	
	Rhode Island	§21-28.6-7(a)(2)(iv), General Laws of Rhode Island	
	Vermont	Title 18, Chapter 86, §4474c(a)(3), Vermont Laws	
	Washington	RCW 69.51A.060(1) and (4)	
	MPP Model State Bill	Section 5(a)(3)(B)	