



Medical Marijuana Law in Massachusetts

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Referendum Question Recap

- Approved 63%-37% in November 2012
- Only 2 municipalities voted no
(Mendon and Lawrence)
- Technically in effect as of January 1
(MDs can issue “written certifications” to “qualifying patients” who will also receive a “limited cultivation registration” until dispensaries open)
- In the first year, the state can approve 35 not-for-profit dispensaries, at least 1 per county and not more than 5 per county

Referendum Question Recap

- **Reminder #1:** This whole process exists in Massachusetts and over a dozen other states because the federal government has not approved medical marijuana for pharmaceutical use.
- **Reminder #2:** Marijuana existed in Massachusetts before the referendum question.
- **Reminder #3:** The campaign is over.

DPH Responsibilities

- 1) Define “presumptive 60-day supply”
 - General Recommendation: 10 ounces (\$4000!)
- 2) Register “Medical Marijuana Treatment Center” [dispensaries]
- 3) Register “Medical Treatment Center Dispensary Agents” [dispensary staff]
- 4) Register “Qualifying Patients” [users]
- 5) Register “Hardship Cultivation”

DPH Projected Timeline:

- 3 Listening Sessions were held.
- A draft regulation was drawn up and presented to the state's Public Health Council.
- 3 public hearings were held.
 - (Plymouth, Boston and Northampton).
- May 8: Public Health Council votes on **105 CMR 725**.
- May 24: effective date

Limits of the State Law

- No requirement for health insurance reimbursement.
- MDs not mandated to approve patient use.
- Does not affect non-medical marijuana use/possession/growing laws.
- No requirement of accommodation for on-site marijuana use.
- No federal law immunity.
- Cannot operate under the influence.

Local Options - Dispensaries

BAN

- The Massachusetts Attorney General disapproved Wakefield's town meeting-approved bylaw banning dispensaries.
 - Conflicts with the state law.
- Cities do not require the same AG approval for city ordinances, however same legal argument would apply to cities.

Local Options - Dispensaries

MORATORIUM

- The Massachusetts Attorney General approved Burlington's town meeting-approved bylaw that imposes a temporary moratorium on dispensaries until June 30, 2014 as it is "limited in time period and scope" as it does not "conflict" with the state law.

Local Options – Dispensaries

ZONING

- Control dispensaries in regards to:
 - Location (existing zone or overlay zone).
 - Similar to adult-only entertainment zones.
 - Establishment size/frontage.
 - Parking minimums/maximums.
 - Distance from schools/parks/residences.
 - Signage.

Local Options - Dispensaries

“SALES” ORDINANCE OR BYLAW

- Mimic tobacco regulations to:
 - Issue local Dispensary licenses and Dispensary Agent permits after meeting certain conditions and pay annual fee (i.e. liquor store license fee).
 - Banning vending machines, roll-your-own, self-service displays, free samples, coupons.
 - Require signage.
 - No food service/tobacco/liquor/lottery
 - Determine hours of operation.
 - Ban on-premises consumption.
 - Provide penalty scheme including suspension for both Dispensary and for Agent.

Local Options - Dispensaries

“SALES” ORDINANCE OR BYLAW

- Statement of Purpose
- Authority (if health regulation)
- Definitions (from state regs. or tobacco sample)
- Local license to Operate a Dispensary
- Marijuana Sales at Dispensary
- Local Dispensary Agent Permit
- Registration Card Holder Responsibilities
- Marijuana Sales by Individuals
- Marijuana Possession
- Marijuana Use
- Violations – Fines and Suspension
- Enforcement

Local Options - Dispensaries

BOARD OF HEALTH PERMITS

- Permits the sale of “food, tinctures, aerosols, oils or ointments.”
- BOH will probably not need to issue retail food service permits as regulation deems “food” as not a food or a drug.
- Locals will not be able to prohibit food products.
- Don't forget what the AG told Wakefield!

State Law - Usage

- Mass. Smoke-Free Workplace Law (MGL Ch. 270 §22) defines “smoking” as the “lighting of a cigar, cigarette, pipe, or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco **OR NON-TOBACCO PRODUCT DESIGNED TO BE COMBUSTED AND INHALED.**”
- Does not include other means of usage.

State Law - Usage

- **Smoking** marijuana is banned...
 - 1) in **workplaces** and **public places** as defined in state law.
 - 2) anywhere a local regulation bans smoking **IF** the “smoking” definition matches the state law definition.
 - 3) in smoke-free **public housing** **IF** marijuana is specifically mentioned or the “smoking” definition matches the state law definition.

Local Options - Usage

- The State's Smoke-free Workplace law is anti-preemptive and municipalities have banned smoking in:
 - Outdoor Dining Areas
 - Parks
 - Playgrounds
 - Non-School Playing Fields
 - Town-Sponsored Events
 - Beaches
 - Cemeteries

THE REGULATIONS

- 105 CMR 725.000 (Implementation of an Act for the Humanitarian Medical Use of Marijuana)
- On DPH's website
- 45 pages long! But Executive Summary does exist.

SCOPE

- 1) THE CONSUMERS: Register (a) certifying physicians, (b) qualifying patients, (c) personal caregivers and (d) hardship cultivation
- 2) THE RETAILERS: Register “Registered Marijuana Dispensaries” (note name change from question’s “Medical Marijuana Treatment Centers”) and Dispensary Agents
- 3) Ensure that qualifying physicians properly certify that a person has a debilitating medical condition

DEFINITIONS

- 1) Bona Fide Physician-Patient Relationship
- 2) Certifying Physician (Mass. Licensed)
- 3) Marijuana-Infused Product (MIP)
- 4) Life-Limiting Illness
- 5) Registered Marijuana Dispensary
- 6) Verified financial hardship (MassHealth OR SSI OR income < 133% fed poverty)

Registration of Certifying MDs

- Currently: any MD
- Before 1/1/14: must have both an active Mass. License and a Mass. Controlled Substance Registration.
- After 1/1/14: above requirements PLUS completion of approved certification of professional development credits regarding marijuana use and substance abuse

Certifying Physician:

- Must utilize the Mass. Prescription Monitoring Program
- Must indicate time period between 15 days to 1 year on certification
- Should cap 60 day supply at 10 ounces
- Can't have relationship with a Dispensary
- Can't offer discounts
- Can't give certification to self or to a Dispensary employee

Registration of “Qualifying Patient”

- Card good for one year, renewable annually
- Patient need not pick a Dispensary ahead of time
- Annual fee will be assessed (but waived for financial hardship)
- Current holders must reapply by 2014

Adult (18+) Patient Registration Requires:

- Bio information including DoB (from a “verifiable ID document”)
- Primary Residence in Massachusetts
- Bio information of their MD
- Bio information of any caregiver
- Registration fee
- Attest they won’t “engage in diversion”

Minor (under 18) Patient Registration Requires:

- All of the above
- AND Written permission from a parent or legal guardian
- AND must designate a personal caregiver who is either a parent or a legal guardian
- AND certified by one pediatrician and one other MD to have a “life-limiting illness” (projected 2 year life span) OR a debilitating medical condition and the benefits of marijuana use outweighs the risks.

Personal Caregiver Registration

Requires:

- Bio information including DoB (from a “verifiable ID document”)
- Qualifying Patient’s name
- If applicable, statement that they will be cultivating marijuana for X patient at X address
- Attest to limits of being a personal caregiver
- Attest they will not “engage in diversion” or use for themselves

Personal Caregiver Registration Requires:

- Current holders must reapply by 2014
- Can only serve one patient unless:
 - Parent, guardian, hospice worker, nursing facility, medical facility
- A patient can have 2 personal caregivers
- Card good for one year, renewable
- Can transport, obtain, cultivate (with permission), prepare, administer product for their patient

Dispensary Agent Registration Requires:

- Be at least 21
- No felony conviction for drug offense
- Provide bio information
- Dispensary responsible to conduct CORI check
- Dispensary reports to DPH if employee leaves
- Card good for one year

Hardship Cultivation Registration Requires:

- Regulation aims to minimize issuance
- Patient cardholder must demonstrate access to a Dispensary is limited because:
 - 1. verifiable financial hardship
 - 2. physical incapacity AND Dispensary won't deliver AND caregiver doesn't exist or they can't get to Dispensary
 - 3. OR Dispensary not within a reasonable distance of residence AND no delivery

Hardship Cultivation Registration Requires:

- Pay non-refundable fee
- Identify one location for cultivation
- Identify how cultivation will occur
- Security Plan – including growing can't be visible from street or other public places
- If issued, good for one year
- Can't sell, barter or donate product
- Agree to possible DPH inspection of cultivation site
- Good for one year, renewable

Dispensary Registration Requires:

- One entity cannot own more than 3 dispensaries (similar to Mass. liquor law)
- Mass. Non-profit incorporation
- Must sell vaporizers
- Must grow at retail site OR One other
- Must be CORI organizer user
- All officers/executives/BoD must be registered dispensary agents

Dispensaries - 2 phase application:

- PHASE I: Applicant provides:
 - 1. Documentation they are Mass. Non-profit
 - 2. Have at least \$500K in escrow account
 - 3. All business partners free from drug felony
 - 4. Any legal or enforcement actions in other states
 - 5. Ability to pay Phase II registration fee
 - 6. Applicable fee
 - 7. Proposed municipality location

Dispensaries - 2 phase application:

- PHASE II: Applicant provides:
 - 1. Non-refundable application fee
 - 2. Detailed corporate information
 - 3. Address & Proof of viable location
 - 4. ADA compliance
 - 5. CORI checks, resumes, bios for all
 - 6. “If available at the time of submission...a description of plans to ensure that the RMD is or will be compliant with local codes, ordinances and bylaws for the physical address of the RMD and for the physical address of the additional location, if any, including any demonstration of support or non-opposition furnished by the local municipality”

Dispensaries - 2 phase application:

- Also....
 - 7. Liability Insurance
 - 8. Detailed Floor Plan
 - 9. Business Plan
 - 10. Operational Plan for Cultivation
 - 11. Procedure for Making MIPs
 - 12. Transportation of Product
 - 13. Patient Registration Procedure
 - 14. Projected Service Area (Translation)
 - 15. Dispensary Agent Training Plan

Dispensaries - 2 phase application:

- Additional Notes:
- Site visit by DPH may occur before approval;
- 105 CMR 725.400 of regulations has a list of possible reasons for denial by state

IF DISPENSARY IS APPROVED:

- A registration certification will be issued and it CANNOT be assigned/transferred
- Certification must be posted conspicuously
- Must be operational within timeframe given by DPH
- Annual Renewal required
- DPH must approve address or name change
- DPH must be notified of a manager change

Dispensaries must have operating procedures that include:

- Hours of operation
- Security and storage measures
- Crime prevention techniques
- List of strains to be cultivated
- Recordkeeping
- “Seed to sale” inventory controls/product tagging/tracking
- Quality control/testing for contaminants
- Staffing Plan and Job Descriptions
- Emergency Procedures
- Alcohol/smoke/drug-free workplace policies
- Plan for handling confidential information
- Patient education
- 2 price lists: market rate & for patients “with documented verifiable financial hardship”

Dispensaries must have cultivating procedures that include:

- Can grow for up to 3 commonly-owned locations
- Non-Organic Pesticide Ban
- Soil testing and safety
- Best practices to reduce contamination
- Procedure for disposing of failed product

Dispensary and Product Handling

- DPH has procedures for preparing from plant to dried product
- MIP production – by Dispensary only.
 - Must comply with sanitary code and food handling regulations
 - Solid and Liquid waste disposal according to state law
 - Sanitizing agents registered with US EPA
 - Adequate plumbing/sewage
 - Potable water
 - Toilet facilities
 - Storage of finished products

Dispensary and Marijuana Labeling

- Packaged in opaque child-proof containers
- No cartoons/images other than Dispensary logo
- Label to include: patient registration #, Dispensary registration #, contact info, quantity of usable marijuana, date packaged, bar codes, cannabinoid profile, THC level, tests performed, DPH warning

Dispensary and MIP Labeling

- Same as above PLUS
- The name of the product
- Quantity of usable marijuana contained within the product as measured in ounces
- List of ingredients
- Date of product creation, “use by” date
- Directions for use
- Warning of nuts and other known allergens

Labeling Warning - VERBATIM

- This product has not been analyzed or approved by the FDA. There is limited information on the side effects of using this product, and there may be associated health risks. Do not drive or operate machinery when under the influence of this product. **KEEP THIS PRODUCT AWAY FROM CHILDREN.**

DISPENSARY MARKETING

- Logo fine but no images of marijuana or related paraphernalia
- External sign size limited to 16" x 18"
- No illumination
- No ads for marijuana or brand names
- No product displays visible from exterior
- No advertising marijuana prices other than price list at establishment
- No promotional gifts, t-shirts, novelty items

Random Notes

- Consumption at Dispensaries is prohibited
- Dispensaries can refuse to serve client
- Internet and mail orders prohibited

DISPENSARY SECURITY REQUIREMENTS

- Must include, but are not limited to:
 - Entry restricted to patients, personal caregivers, dispensary agents
 - outside vendors, contractors under certain conditions can obtain limited entry
 - Prevent loitering outside
 - Store all product in locked safe or vault
 - Adequate lighting of outside perimeter
 - Reduce means of people concealing outside
 - Dispose of all product if registration revoked
 - Security Alarm system according to regulation
 - Annual security system audit

DISPENSARY PRODUCT TRANSPORT

- Only can be done by Dispensary Agents
- Weighing and inventory must take place before and at delivery time
- Shipping manifests required
- No additional stops during deliveries
- Minimum of 2 dispensary agents per delivery
- Must follow regulation's requirements for home delivery

DISPENSARY CONFIDENTIALITY

- Required for qualifying patients, personal caregivers and dispensary agents, exempt from state's public records law
- Some info can be released to DPH upon request
- Dispensary applications and information are not confidential

DISPENSARY INSPECTIONS

- Agree to DPH inspection at any time
- Inspection will include
 - Testing marijuana and MIPs
 - Dispensary agents and their activities
 - All records

MUNICIPALITIES

- As per the regulation:
- A Dispensary and other registered persons shall comply with all local rules, regulations, ordinances and bylaws.
- The Department does not mandate any involvement by municipalities or local boards of health in the regulation of Dispensaries, qualifying patients with hardship cultivation registrations, or any other aspects of medical marijuana. However, **nothing** in 105 CMR 725.000 shall be construed so as to **prohibit appropriate, lawful local oversight and regulation, including fee requirements, that does not conflict or interfere** with the operation of 105 CMR 725.000.

Shameless Plug

- Over 400,000 Americans still die from tobacco-related illnesses annually
(many more than from marijuana!)
- We are happy to help you update your local tobacco measures with state-of-the-art policies.
- Give us a call!