

THE LEGISLATIVE REFERENCE BUREAU



IS THE GRASS ALWAYS GREENER?

An Updated Look at Other State Medical Marijuana Programs

THE LEGISLATIVE REFERENCE BUREAU



Presented by:

Lance Ching
Research Attorney
Legislative Reference Bureau

STUDY



State Medical Marijuana Programs - House Concurrent Resolution No. 48, H.D. 2, S.D. 1 (2014) directed the Bureau to "report on the policies and procedures for access, distribution, security, and other relevant issues related to the medical use of cannabis in all states that currently have a medical cannabis program[.]"

Scope of the Study - Colorado and Washington have enacted laws that effectively legalize the possession and use of marijuana by people within those states who are twenty-one years of age or older.

However, since the Resolution directs the Bureau to report on medical marijuana programs, other programs, such as "recreational marijuana" or "retail marijuana" programs, are not addressed by the study.

HAWAII MEDICAL MARIJUANA PROGRAM



Act 228, Session Laws of Hawaii 2000 - established Hawaii's medical marijuana program, which is codified as part IX, chapter 329, Hawaii Revised Statutes (HRS). Became effective June 14, 2000.

Current Operating Structure – Currently administered by the Department of Public Safety (PSD). PSD adopted administrative rules on December 28, 2000.

Legal Protection - The Hawaii medical marijuana program affords certain protections to qualifying patients, primary caregivers, and treating physicians by providing that the medical use of marijuana is an affirmative defense to any prosecution involving marijuana, so long as the qualifying patient or primary caregiver has strictly complied with the requirements of the program.

HAWAII MEDICAL MARIJUANA PROGRAM – CONTINUED



Program Requirements - In order to qualify as a patient under the program, a person must have written certification from a physician, affirming that the person has been diagnosed with a debilitating medical condition and that the potential benefits of the medical use of marijuana would likely outweigh the health risks for the particular qualifying patient.

Qualifying patients and their primary caregivers are required to provide registration information for a confidential patient registry in order to participate in the medical marijuana program.

HAWAII MEDICAL MARIJUANA PROGRAM – CONTINUED



Issues that Remain Uncertain

Access to Medical Marijuana - Although the Hawaii medical marijuana program permits qualifying patients to use medical marijuana, it does not provide patients with a method of obtaining marijuana other than by allowing the patient or caregiver to grow a limited amount of marijuana.

The law is silent regarding how the qualifying patient is to obtain the marijuana.

HAWAII MEDICAL MARIJUANA PROGRAM – CONTINUED



Issues that Remain Uncertain

Transportation of Medical Marijuana - Federal law does not allow for the interstate transportation of medical marijuana, or transportation of medical marijuana through federal security checkpoints.

However, the vast majority of passengers who travel between Hawaii and other states, or from one of Hawaii's islands to another, do so via commercial passenger aircraft and traverse federal Transportation Security Administration checkpoints.

HAWAII MEDICAL MARIJUANA PROGRAM – CONTINUED



Transportation of Medical Marijuana – continued

Travel by air or sea between the major Hawaiian islands constitutes interstate travel. This results in a potential for federal prosecution of Hawaii qualifying patients traveling interisland who possess medical marijuana.

Hawaii state law remains unsettled concerning the transportation of medical marijuana outside the home. The definition of "medical use" in HRS § 329-121 includes the "transportation of marijuana," while HRS § 329-122(c)(2)(E) prohibits the use of medical marijuana in any "place open to the public."

In *State v. Woodhall*, the Hawaii Supreme Court overturned a qualifying patient's conviction for promoting a detrimental drug in the third degree, in relation to his possession of medical marijuana in a public place, but emphasized that the decision applied only to the specific facts and circumstances of that case.

HAWAII MEDICAL MARIJUANA PROGRAM – CONTINUED



Transportation of Medical Marijuana – continued

The court held that there was an "irreconcilable inconsistency between the authorized transportation of medical marijuana under HRS § 329-121, and the prohibition on transport of medical marijuana through 'any . . . place open to the public' under HRS § 329-122(c)(E)." The court noted that Hawaii's medical marijuana laws do not explicitly provide for how medical marijuana would initially arrive at the qualifying patient's home, nor provide for its possession outside the home.

Therefore, it is uncertain whether or to what extent a Hawaii qualifying patient or caregiver may transport medical marijuana anywhere outside the home, even when limited to travel within the same island, without violating state drug enforcement laws.

HAWAII MEDICAL MARIJUANA PROGRAM – CONTINUED



Recent Developments in Hawaii's Medical Marijuana Laws

Act 177, Session Laws of Hawaii 2013 - Transfers the administration of Hawaii's medical marijuana program from the Department of Public Safety to the Department of Health no later than January 1, 2015.

Act 178, Session Laws of Hawaii 2013 - Beginning January 2, 2015, the definition of "adequate supply" will change from "three mature marijuana plants, four immature marijuana plants, and one ounce of usable marijuana per each mature plant" to "seven marijuana plants, whether immature or mature, and four ounces of usable marijuana at any given time."

OTHER STATE PROGRAMS



Twenty-three states with medical marijuana programs:

| | | |
|-------------|---------------|--------------|
| Alaska | Maine | New Jersey |
| Arizona | Maryland | New Mexico |
| California | Massachusetts | New York |
| Colorado | Michigan | Oregon |
| Connecticut | Minnesota | Rhode Island |
| Delaware | Montana | Vermont |
| Hawaii | Nevada | Washington |
| Illinois | New Hampshire | |

OTHER STATE PROGRAMS - CONTINUED



No One "Model" Program

Some issues or program characteristics are addressed by all or nearly all of the states with medical marijuana programs.

Exactly how these issues or characteristics are addressed likely depends upon a number of factors, which may include:

- The size of their medical marijuana patient population
- Whether the majority of their population lives in urban or rural areas
- Whether distance from or access to medical marijuana is an issue
- Level of support for such programs within the state's population and among its decision-makers

OTHER STATE PROGRAMS - CONTINUED



No One "Model" Program - continued

There are many similarities, as well as many differences, among the various states' medical marijuana programs.

There does not appear to be any one model that can be touted as an exemplary program that all states should follow.

Some programs are relatively new and not yet fully operational.

Only eight states have operational distribution systems.

➤ Arizona, California, Colorado, Maine, New Jersey, New Mexico, Rhode Island, and Vermont

OTHER STATE PROGRAMS - CONTINUED



No One "Model" Program - continued

Many of the earlier states to adopt medical marijuana programs did not provide for distribution systems at that time.

Only a few states have much of a track record concerning programmatic aspects of a medical marijuana distribution system and such concomitant issues as those relating to cultivation, access, safety, security, etc.

OTHER STATE PROGRAMS - CONTINUED



General Program Characteristics of State Medical Marijuana Programs

All states with medical marijuana programs:

- Decriminalize the use of marijuana for medical purposes
- Require that qualifying patients be certified by a physician as having a medical condition that would benefit from the medical use of marijuana
- Specify the maximum amount of medical marijuana that a qualifying patient and caregiver may possess

Nearly all state programs have confidential patient registries that are administered by a state agency.

OTHER STATE PROGRAMS - CONTINUED



Access to Medical Marijuana

- 15 states allow for home cultivation of medical marijuana:
 - Alaska, Arizona, California, Colorado, Hawaii, Maine, Massachusetts, Michigan, Montana, Nevada, New Mexico, Oregon, Rhode Island, Vermont, and Washington
- 18 states incorporate some form of distribution system into their programs:
 - Arizona, California, Colorado, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island, and Vermont
- 10 states appear to both allow home cultivation and provide for dispensaries:
 - Arizona, California, Colorado, Maine, Massachusetts, Nevada, New Mexico, Oregon, Rhode Island, and Vermont

DISTRIBUTION SYSTEMS



Regulation of Distribution Systems

State vs. Local Regulation – 17 out of 18 states provide for statewide regulation of their medical marijuana distribution systems.

California is the only state where distribution of medical marijuana is regulated exclusively at the county and city level.

Regulatory agency - In a majority of the 17 states, the entity responsible for regulation is the state health agency:

- Arizona, Delaware, Maine, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, and Rhode Island

DISTRIBUTION SYSTEMS - CONTINUED



Regulation of Distribution Systems - continued

Form of Regulation

- In 12 of 17 states, regulation takes the form of a registration requirement:
 - Arizona, Delaware, Illinois, Maine, Massachusetts, Minnesota, Nevada, New Hampshire, New York, Oregon, Rhode Island, and Vermont
- In 4 states, regulation is through a licensure requirement:
 - Colorado, Connecticut, Maryland, and New Mexico
- New Jersey imposes a permit requirement.

DISTRIBUTION SYSTEMS - CONTINUED



Common Elements of Statewide Distribution Systems

Fees and Taxes – All 17 states impose one or more fees on medical marijuana cultivation centers and dispensaries. Most states also impose various state or local taxes on the sale of medical marijuana.

- **Exceptions:** Massachusetts, Minnesota, New Hampshire, Oregon, and Vermont

Training and Educational Requirements – 14 of 17 states have incorporated some level of training requirements for medical marijuana dispensary staff.

- **Exceptions:** Illinois, Maryland, and New York

Most states also require that certain educational information be provided to patients.

- **Exceptions:** Colorado, Maryland, Minnesota, and Oregon

DISTRIBUTION SYSTEMS - CONTINUED



Common Elements of Statewide Distribution Systems - continued

Labeling – Most states have adopted some form of labeling requirement for medical marijuana products.

➤ **Exception:** Maryland

Quality Control - At least 11 of 17 states have statutory provisions that address quality control to some extent:

➤ Colorado, Connecticut, Delaware, Illinois, Maine, Minnesota, Nevada, New Hampshire, New Mexico, New York, and Oregon

Of these, 9 states have provisions that involve marijuana testing:

➤ Colorado, Delaware, Illinois, Maine, Minnesota, Nevada, New Mexico, New York, and Oregon

DISTRIBUTION SYSTEMS - CONTINUED



Common Elements of Statewide Distribution Systems - continued

Quantity Control

- The majority of states generally control the supply of medical marijuana by establishing either minimum or maximum limits on the number of cultivation centers or dispensaries that may be operated in the state.
 - **Exceptions:** Colorado, New Mexico, and Oregon
- Nearly half of the states provide for a limitation on the inventory of cultivation centers or dispensaries:
 - Colorado, Maine, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island, and Vermont

DISTRIBUTION SYSTEMS - CONTINUED



Common Elements of Statewide Distribution Systems - continued

Quantity Control - continued

- 15 of 17 states also limit the amounts of medical marijuana that dispensaries may provide to patients, which generally coincide with a patient's legal possession limits:
 - **Exceptions:** Maryland and New Mexico
- 8 of 17 states also provide that a patient may only obtain marijuana from a particular dispensary if that dispensary has been designated by the patient:
 - Colorado, Delaware, Illinois, Maine, Nevada, New Hampshire, Rhode Island, and Vermont

DISTRIBUTION SYSTEMS - CONTINUED



Common Elements of Statewide Distribution Systems - continued

Limits on Channels of Supply and Distribution - Regulatory statutes of all states generally establish a closed circuit in which medical marijuana circulates only among cultivation centers, dispensaries, patients, and their caregivers. Such a system might look like this:

- A cultivation center or dispensary cultivates marijuana in an enclosed, locked facility with restricted access.
- A cultivation center or dispensary may also obtain marijuana from the following sources:
 - Another cultivation center or dispensary;
 - A patient;
 - The patient's caregiver.
- A dispensary may distribute medical marijuana to the following entities:
 - Another dispensary;
 - A patient;
 - The patient's caregiver.

DISTRIBUTION SYSTEMS - CONTINUED



Common Elements of Statewide Distribution Systems - continued

Limits on Channels of Supply and Distribution – continued

- The majority of the 17 states require that marijuana be cultivated only in an enclosed, locked facility:
 - Arizona, Connecticut, Delaware, Illinois, Maine, Massachusetts, Minnesota, Nevada, New Hampshire, New York, Rhode Island, and Vermont
 - 7 of these states also require that access to the facility be restricted:
 - Arizona, Delaware, Illinois, Maine, Nevada, New Hampshire, and Vermont
- 9 of 17 states limit the external sources from which cultivation centers or dispensaries may obtain medical marijuana that they do not cultivate:
 - Arizona, Connecticut, Delaware, Illinois, Maine, Nevada, New Mexico, Oregon, and Vermont

DISTRIBUTION SYSTEMS - CONTINUED



Common Elements of Statewide Distribution Systems - continued

Limits on Channels of Supply and Distribution – continued

- All 17 states allow a dispensary to distribute medical marijuana to two entities -- a patient or the patient's caregiver. 10 of these states limit distribution to *only* those two entities.
 - Connecticut, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Jersey, Oregon, Rhode Island, and Vermont
- Another 6 states also permit a dispensary to distribute medical marijuana to another dispensary:
 - Arizona, Colorado, Nevada, New Hampshire, New Mexico, and New York

DISTRIBUTION SYSTEMS - CONTINUED



Common Elements of Statewide Distribution Systems - continued

Security Requirements - All 17 states require their cultivation centers and dispensaries to comply with various security requirements -- ranging from installation of a functional security alarm to requiring facilities to meet certain design specifications.

- The majority of states require, at minimum, installation of an alarm system and video surveillance of the premises.
 - **Exceptions:** Maryland, Minnesota, New Mexico, New York, and Rhode Island
- Most states impose various additional security requirements.
 - **Exceptions:** Maryland, New Mexico, and New York

DISTRIBUTION SYSTEMS - CONTINUED



Medical Marijuana Programs Resist Simple Categorization

There may be a tendency to want to categorize medical marijuana programs along artificial lines (e.g., restrictive vs. nonrestrictive programs).

However, given the wide variation in how states have addressed the issues and program characteristics in establishing their medical marijuana program, such an approach would seem too simplistic and would ignore significant nuances of each state's program.

RELATED DEVELOPMENTS



Limited Access Marijuana Product Laws

In addition to the twenty-three states with medical marijuana programs, eleven other states have enacted limited access marijuana product laws over the past year that make provision for the use of certain strains of marijuana for limited medical or research purposes.

- Alabama, Florida, Iowa, Kentucky, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, Utah, and Wisconsin

While not as comprehensive as more traditional medical marijuana programs, these limited access laws have the attraction of focusing on strains of marijuana that have little or no psychoactive effects.

FEDERAL POSITION



Controlled Substances Act

The Controlled Substances Act classifies marijuana as a **Schedule I substance**, which means that the federal government considers marijuana to have a high potential for abuse and no currently accepted medical use in treatment in the United States.

FEDERAL POSITION



United States Department of Justice Guidelines

On October 19, 2009, the United States Department of Justice issued a memorandum that advised federal prosecutors in states with medical marijuana programs to refrain from pursuing cases against individuals for marijuana offenses that did not violate state medical marijuana laws.

In a subsequent memorandum issued on August 29, 2013, the Department of Justice clarified its position by enumerating the following specific nationwide enforcement priorities regarding marijuana:

FEDERAL POSITION - CONTINUED



United States Department of Justice Guidelines - continued

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

FEDERAL POSITION - CONTINUED



United States Department of Justice Guidelines – continued

The Department of Justice noted that it has not historically devoted resources to prosecuting individuals whose conduct is limited to possession of small amounts of marijuana for personal use on private property and that it has generally left enforcement to state and local authorities unless the marijuana-related activities run afoul of the enumerated enforcement priorities.

The Department of Justice indicated that it is inclined to defer to state and local enforcement in states that authorize the production, distribution, and possession of medical marijuana, provided the affected states implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests.

FEDERAL POSITION - CONTINUED



United States Department of the Treasury Guidelines

Marijuana-related businesses have complained that federal marijuana prohibitions, combined with federal requirements regarding financial institutions, block their access to banking and credit card services and limit them to cash transactions that raise security concerns.

Banks have also raised concerns that providing services to marijuana-related businesses could subject them to federal penalties.

These combined concerns resulted in medical marijuana-related businesses being unable to deposit revenues from their businesses into financial institutions.

FEDERAL POSITION - CONTINUED



United States Department of the Treasury Guidelines - continued

In response, the United States Department of the Treasury issued a memorandum on February 14, 2014, to clarify Bank Secrecy Act expectations for financial institutions that seek to provide services to medical marijuana-related businesses.

The Treasury memorandum:

- Establishes guidelines to clarify and streamline federally-required reporting requirements for financial institutions
- Provides guidance on how to indicate whether or not the marijuana-related business raises suspicion of:
 - Any illegal activity, other than a violation of the federal prohibitions against marijuana; or
 - Any activity that implicates any of the Department of Justice's enforcement priorities regarding marijuana.

FEDERAL POSITION - CONTINUED



Recent Federal Developments

Pending Legislation

The United States House of Representatives has approved an amendment to an appropriations bill that would, if approved by the Senate and the President, prohibit the United States Department of Justice from spending federal funds in federal fiscal year 2015 to prevent states from implementing state laws that authorize the use, distribution, possession, or cultivation of marijuana for medical purposes.

FEDERAL POSITION - CONTINUED



Recent Federal Developments - continued

Proposed Legislation

- On July 24, 2014, an amendment was proposed to a bill being heard by the United States Senate that would recognize the right of states to enact laws that authorize the use, distribution, possession, or cultivation of marijuana for medical use.
- On July 28, 2014, a bill was introduced to the United States House of Representatives that would remove therapeutic hemp and cannabidiol from the definition of marijuana in the Controlled Substances Act.

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Thank you for your attention.

This presentation will be followed by a
Question & Answer session.

Copies of the report are available at:

www.lrbhawaii.org

