

Medical Marijuana Access: Models of State Regulation of Dispensing

States with existing medical marijuana laws and those considering new medical marijuana laws are increasingly including provisions to allow well-regulated distribution. Lawmakers are realizing it is impractical and inefficient to require patients to cultivate their own medicine or to find an individual caregiver to do so. A patient stricken with cancer cannot afford to wait three months for a seed to turn into usable marijuana.

On October 19, 2009, the U.S. Attorney General's office issued a written policy of not targeting those "in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana," opening up new possibilities for states to allow well-regulated dispensing of medical marijuana. This followed up on similar comments from President Obama. Prior to this shift in federal policy, only California and Colorado had dispensaries, and neither state has state registration requirements or regulations.

In January 2009, New Mexico became the first state to allow the regulated distribution of marijuana to patients. In June, the Rhode Island legislature enacted a similar law to add "compassion centers" to its existing law. In addition, on November 3, Maine voters added dispensaries to their existing law. New York and New Jersey may also pass comprehensive medical marijuana bills this year, and several other states considered bills in 2009 that would have allowed medical marijuana dispensing. Both the New Hampshire and Minnesota legislatures passed medical marijuana bills with distribution in 2009, but both bills were vetoed. The New Hampshire bill came only two votes shy of a veto override. This memo provides an overview of the different state models that allow dispensing.

Rhode Island

Rhode Island's law, and bills proposed in Massachusetts and New Hampshire, allow a set number of dispensaries throughout the state, give the health department broad latitude in setting security and record-keeping regulations, and also contain specific security requirements. In this model, patients can only obtain marijuana from the centers they designate, and the amount of marijuana that can be grown is tied to the number of patients.

Pursuant to its law, Rhode Island will allow three dispensaries to operate within the state. The New Hampshire and Massachusetts bills also prescribe a set number of dispensaries, but they also would allow their health departments to register additional dispensaries if the number that was initially allowed is not sufficient to meet patient needs.¹ In these three state laws or proposals, the health department decides which applicants to grant registrations to. In doing so, it must consider factors such as patients' access to marijuana throughout the state, the dispensary's security plans, and the applicants' history operating a non-profit or business. The departments are also tasked with inspecting the dispensaries.

These laws include specific security requirements for the dispensaries, including that each staffer must register with the state and undergo a background check. In addition, each dispensary must have a security alarm system and cultivate any marijuana in an enclosed, locked area. The department is also charged with creating security, oversight, and recordkeeping rules which dispensaries would be required to comply with. The dispensaries would pay an application

¹ The Massachusetts bill has not yet been amended to include dispensaries, but amendments are drafted and will be submitted to do so. This refers to the amendment that is anticipated.

and a licensing fee, as well as a fee for each staffer. In New Hampshire's bill, the fees would be set by the health department and would have to be sufficient to cover the costs of administering the program. In Rhode Island's law and Massachusetts' bill, the application fees are \$250 and registration fees are \$5,000.

In this model, the centers must operate on a not-for-profit basis, and they must either grow their marijuana on-site or at a separate, registered location that has to be part of the center. The amount of marijuana they can possess is limited and is based on the number of patients who designate the center. However, the New Hampshire and Massachusetts bills would allow dispensaries to start off with a set amount of plants and marijuana because patients are unlikely to designate the center until they are able to provide medicine, which cannot be done until they've had a chance to grow, process, and package.

All three provide restrictions on some or all people with drug convictions. In Rhode Island, only those convicted of drug felonies are excluded. Center registrations are valid for two years, unless they are revoked or suspended for misconduct. Beginning 60 days before the registration would expire, the centers could reapply. In all three states, the license would not be renewed if it had been suspended or if an inspection raised serious issues.

Each of the three provides a cap on how much marijuana can be obtained in a given period of time. In Rhode Island, dispensaries are not allowed to dispense more than 2.5 ounces of marijuana to a patient in a 15-day period. They also could not be located within 500 feet of a school in any of the three states. In all three, a report would be created periodically with information such as patients' access and the efficacy of the compassion centers, both individually and in combination, in serving the needs of the states' patients. In Rhode Island, the report would be produced by a legislative oversight committee, which would include patients and medical professionals.

Rhode Island's full text available at:

<http://www.rilin.state.ri.us/Lawrevision/plshort/pl2009nu.htm>

New Hampshire's full text available at:

<http://www.gencourt.state.nh.us/legislation/2009/HB0648.html>

Massachusetts' proposal is not yet publicly available.

Maine

A recent poll found that 59% of Maine voters plan to vote for Question 5 on November 3, 2009. The ballot measure would make several changes to the state's medical marijuana law, including allowing for regulated non-profit dispensaries. Like the other New England bills and law, patients would only be able to go to the dispensaries they designate and the dispensaries would need to be non-profit. The major difference between Maine's proposal is that the initiative does not specify a number of dispensaries. Instead, localities could enact reasonable caps and regulations on the number and the state would register all dispensaries that comply with any such local laws and which meet the state requirements.

As is the case in the other New England proposals, the department of health would set security, oversight, and recordkeeping rules which dispensaries would be required to comply with. Dispensaries would be subject to inspection following reasonable notice. The dispensaries would also be required to cultivate the marijuana in an enclosed, locked facility. They each would

pay a \$5,000 registration fee. The department must grant a license to any applicant who has not been found guilty of a felony drug offense, provided they provide the information and fee required. Each staffer must register with the state and also cannot have a felony drug conviction.

Registrations can be suspended and revoked for misconduct and dispensaries could possess six plants per patient. Dispensaries would not be allowed to dispense more than 2.5 ounces of marijuana to a patient in a 15-day period. They could not be located within 500 feet of a school.

Full text available at:

<http://www.mainepatientsrights.org/Petition%20MEDICAL%20MARIJUANA.pdf>

New Mexico

The provisions of New Mexico's medical marijuana law that relate to dispensing are very brief and leave a great deal of discretion to the department of health. Under the department's rules, licensed producers must be non-profit private entities. Their board of directors must include a physician and three registered patients, whose identities are all confidential. Everyone associated with the producer must undergo a background check.

The producers must keep a photo copy of each patient's ID card who receives marijuana from the producer and an employment contract and personnel record for each employee. They must also have training on patient confidentiality, professional conduct, and informational developments in medical marijuana, as well as how to respond to an emergency. Applicants to be producers pay a nonrefundable \$100 fee. They cannot be located within 300 feet of a school, and cannot provide volume discounts. They must provide information to the department, including potential side effects patients could experience and a sample of how they will notify patients of the marijuana's quality. Clients and the department have access to the non-profit's confidential records. Applicants also have to describe their security policies, procedures and crime prevention techniques.

Licensed producers in New Mexico are limited to 95 mature plants and seedlings. The number of licenses issued is at the discretion of the department and is based on need. As of October 2009, one applicant is up and running. In September, the only dispensary ran out of medical marijuana due to the low cap on plants and the inadequate number of operating dispensaries. The department said it expects to license additional producers shortly.

For producer requirements, see: <http://www.nmhealth.org/marijuana.html>

New York

New York's twin medical marijuana bills base its distribution system on the state law for prescriptions, but with changes that are necessary given federal law. The state health department would register both registered producers, who could only produce marijuana, and "registered organizations," which would be allowed to both produce and dispense marijuana for medical use. Pharmacies and county health departments could qualify as a "registered organization," but they are very unlikely to try to do so until federal law changes. Thus, to ensure the bill provides access, it also lets non-profits operate as registered organizations.

Registered organizations could dispense marijuana to any patient who presents the organization with a registry ID card. They would be required to keep a receipt of the dispensing,

and provide one to the patient or caregiver who received the marijuana. For patient confidentiality, all records would be kept using the patient's medical marijuana ID number. They would also have to provide a safety insert about methods of administering medical marijuana, potential dangers, and how to recognize problematic usage.

The applicant would be required to provide information that its managing officers are of good moral character, that it has enough property to operate a registered organization, that it will comply with state laws, and that it can maintain effective control over diversion. If the department is satisfied of all of that, and that the granting of the license is in the public interest, it must grant the registration. The health department will determine the registration fee. Registrations are generally valid for two years. When applying for a new license, the applicant must include any known or alleged incident of theft, loss, or diversion.

The bill is available at: <http://assembly.state.ny.us/leg/?bn=A09016&sh=t>

California

It is estimated that more than 1,000 dispensaries operate in California. The state does not have any state registration or regulation for them. State law says that patients and their caregivers cannot be prosecuted under a number of laws, including sales laws, solely for, "collectively or cooperatively ... cultivat[ing] marijuana for medical purposes." It also says that it does not "authorize any individual or group to cultivate or distribute marijuana for profit." California Attorney General Jerry Brown issued guidelines for collectives in August 2008, saying that if they comply with the guidelines, any "properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law."

Cities and counties have taken a varied approach on what exactly is allowed under state law and how to respond to it. At least 30 cities have set up regulations and issued business licenses to dispensaries. In other areas, such as San Diego County, prosecutors and local law enforcement have targeted storefront dispensaries, claiming they are illegal. Recently, the L.A. County prosecutor claimed that sales from storefront dispensaries are illegal. In addition, 120 cities have issued bans and 73 have moratoria in place. Cases challenging some of those restrictions are being litigated. There is widespread agreement among lawmakers in other states that are considering medical marijuana that California's vague model should not be followed.

California's medical marijuana laws, SB 420 and Proposition 215, along with the AG guidelines, are available at:

<http://www.cdph.ca.gov/programs/MMP/Pages/Medical%20Marijuana%20Program.aspx>

Colorado

Although a handful of dispensaries existed in Colorado by mid-2008, the number has increased since President Obama announced the change in federal policy. There is no explicit recognition of dispensaries in state law, so they do not provide for any regulation or registration. However, the state's law allows for caregivers to provide marijuana to patients, and does not cap the number of patients that can be served by a single caregiver. Caregivers must be 18 or older and have "significant responsibility for managing the well-being of a patient." An August 2009 department rule defined that as including "provision of medical marijuana."

Colorado's law does not require dispensing to be non-profit.

Several cities have begun to move to regulate and in some cases ban the operation of dispensaries. Colorado Attorney General John Suthers called on the legislature to pass regulations and Sen. Chris Romer has said he would introduce legislation to regulate them in 2010. Cities that have moved to regulate dispensaries include Silverthorne, Frisco, and Breckenridge.

Given the unpopularity of Colorado's lack of regulation even among many Colorado policymakers, it is best not to follow that model. In addition, it is difficult to be in "clear and unambiguous" compliance with a vague and ambiguous law, thus increasing the possibility of federal raids on providers.

Colorado's medical marijuana laws and administrative rules are available at:

<http://www.cdphe.state.co.us/hs/medicalmarijuana/resources.html>

Arizona

Arizona voters are expected to vote in November 2010 on a medical marijuana proposal that allows non-profit, regulated dispensaries. The proposal would allow patients to obtain marijuana from any of the state-regulated and registered dispensaries. The dispensaries would have access to a database to confirm patients' ID cards and enter how much marijuana they dispense to a patient. Patients could not receive more than 2.5 ounces in 14 days.

The department of health must grant a registration to any applicant who has not been found guilty of a felony drug offense, provided they provide the information and fee required, are in compliance with any local zoning regulations, provide operating procedures that are consistent with department regulations, and adequately provide for security and recordkeeping. Each staffer must register with the state and also cannot have certain felony convictions.

The department of health would set security, oversight, and recordkeeping rules which dispensaries would be required to comply with. The dispensaries would also be required to cultivate the marijuana in an enclosed, locked facility and to have an operational security alarm system. Cities and towns could enact reasonable zoning regulations on where dispensaries could operate. They each would pay a registration fee of no more than \$5,000 and an annual renewal fee of no more than \$1,000. Dispensaries would be subject to inspection following reasonable notice. Since patients are not tied to dispensaries, the initiative does not specify how much marijuana can be grown and possessed by the dispensaries.

Registrations can be suspended and revoked for misconduct at dispensaries. Dispensaries could not be located within 500 feet of a school.

The full initiative is available at: <http://stoparrestingpatients.org/home/initiative>

Conclusion

When regulated responsibly, medical marijuana dispensaries provide a safe, reliable means of access to patients who might otherwise be forced to purchase supplies from underground markets, or be denied doctor-recommended medication altogether. These model experiments have shown that despite fears to the contrary, dispensary systems can be implemented with no adverse impact on crime rates, access to marijuana for underage or unverified users, or state budget concerns.

Given the growing volume of scientific evidence documenting the various diseases and conditions for which marijuana has been shown to be a safe and effective treatment, it is imperative that states courageous enough to take the lead on medical marijuana enact laws that provide safe and adequate access. While the California model has shown there is a wrong way to administer medical marijuana programs, other states such as Rhode Island and New Mexico have shown that, rather than leaving sick and frail patients to their own imaginations, flexible and well-crafted laws and regulations can provide patients safe access to needed medication in a manner that does not further strain state budgets.