Pennsylvania’s Medical Marijuana Program
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Vision

The Pennsylvania Department of Health's vision is to have a high quality, efficient and compliant medical marijuana program for commonwealth residents with serious medical conditions as defined by the Medical Marijuana Act.
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Mission

When fully implemented, the medical marijuana program will provide access to medical marijuana for patients with a serious medical condition through a safe and effective method of delivery that balances patient need for access to the latest treatments with patient care and safety.

The medical marijuana program will also promote high quality research into the efficacy of medical marijuana in treating a patient’s serious medical condition.
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Guiding principles

The Pennsylvania Department of Health (PADOH) will strive to develop and maintain a medical marijuana program that is viewed as:

- Medically-focused and benefitting patients;
- Consistent, competent and efficient;
- Leading, innovative and research-driven; and
- Transparent.
What is medical marijuana?

- Pills, oil or topical forms such as patches or ointments
- A form medically appropriate to vaporize
- Tinctures and liquids
What is a “serious medical condition” under the act?

- Amyotrophic lateral sclerosis
- Autism
- Cancer
- Crohn’s disease
- Damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity
- Epilepsy
- Glaucoma
- Human immunodeficiency virus (HIV)/Acquired immune deficiency syndrome (AIDS)
- Huntington’s disease
- Inflammatory bowel disease
- Intractable seizures
- Multiple sclerosis
- Neuropathies
- Parkinson’s disease
- Post-traumatic stress disorder
- Severe chronic or intractable pain of neuropathic origin or severe chronic or intractable pain in which conventional therapeutic intervention and opiate therapy is contraindicated or ineffective
- Sickle cell anemia
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Who will be able to obtain medical marijuana?

Patients who are residents of the commonwealth who have a serious medical condition that has been certified by a practitioner may obtain medical marijuana.
Can patients with a serious medical condition receive medical marijuana if they are under the age of 18?

Yes, patients may use one of these as a caregiver:

• Parents
• Legal guardians
• Third-party caregiver
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Can someone else obtain medical marijuana on behalf of a patient?

Patients can designate two caregivers.

- Caregivers must apply and register with the PADOH.
- Caregivers must complete a background check.
Who is considered a "caregiver" under the act?

An individual 21 years of age or older, unless otherwise authorized, such as parents, legal guardians or third-party caregivers.
Can a caregiver be designated by more than one patient?

Yes. A caregiver can have up to five patients.
How can a physician participate in the medical marijuana program?

- Hold a valid Pennsylvania medical license that is active and in good standing
- Register with the PADOH
- Complete a four-hour training
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How can a physician register for the medical marijuana program?

- Visit the PADOH website at www.medicalmarijuana.pa.gov.

- Click on physicians to find the practitioner registry.
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Search must include Date of Birth and one of the following fields: Patient ID, Email Address, or Last Name.

Patient ID: 1145
Date Of Birth: 10/03/1965
Email Address: Email Address
Last Name: Last Name
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How can patients and caregivers apply for medical marijuana ID cards?

Patients and caregivers may register now on the PADOH website at: www.medicalmarijuana.pa.gov.
Where will patients or caregivers obtain medical marijuana?

Patients and caregivers will obtain medical marijuana at an approved dispensary that has been issued a permit from the PADOH.
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*Dots represent counties where permits are issued, not specific locations.
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How can the state prevent diversion of medical marijuana?

Seed to sale tracking system and patient/caregiver registry

- Tracks inventory
- Tracks all transportation of product
- Monitors dispensing
- Allows patients and caregivers to register online

All inventory is tracked.

Seed is planted.

Plant is processed into medicine.

Medicine is safely delivered to a dispensary.

Medicine is dispensed to a patient or their caregiver.
How can changes be made to Pennsylvania’s medical marijuana program?

Medical marijuana advisory board

- Designees with knowledge and experience in issues related to care and treatment
- Family or household members of patients
- Patient advocates
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What else will the Medical Marijuana Act do?

• Facilitate research
• Provide funding for:
  ▪ Drug abuse prevention
  ▪ Counseling and treatment services
  ▪ Local police departments
• Help patients with associated costs:
  ▪ Aid for application fee
  ▪ Background checks for caregivers
  ▪ Reduced costs for medical marijuana
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Questions?

Visit our website for updates on implementation. www.medicalmarijuana.pa.gov

To contact the staff at the Pennsylvania Office of Medical Marijuana, send an email to RA-DHMedMarijuana@pa.gov.
Presented by Michael A. Hynum, Esq., President of Hynum Law
Unlawful Use

• Unlawful use described.--It is unlawful to:
  1. Smoke medical marijuana.
  2. Except as provided in subsection (c), incorporate medical marijuana into edible form.
  3. Grow medical marijuana unless the grower/processor has received a permit from the department under this act.
  4. Grow or dispense medical marijuana unless authorized as a health care medical marijuana organization under Chapter 19.
  5. Dispense medical marijuana unless the dispensary has received a permit from the department under this act.

(c) Edible medical marijuana.--Nothing in this act shall be construed to preclude the incorporation of medical marijuana into edible form by a patient or a caregiver in order to aid ingestion of the medical marijuana by the patient.
What Would Policies and Procedures Need to Include?

• Notification upon admission of P&Ps
• Proof of registration (May need a confidential registry waiver)
• Proof of identity and relationship with primary caregiver
• Agreement by provider and patient to abide by facility policies and procedures related to marijuana use
• Sample P&Ps from Washington Health Care Assn...
MEDICAL MARIJUANA

POLICY:

This community supports the client's right to use medical marijuana consistent with the provisions of Washington's Medical Marijuana statute, chapter 69.51A RCW, as approved and directed by his/her health care professional and under certain circumstances within this long term care setting.

PROCEDURE:

1. A client who uses medical marijuana in this setting must:
   a. Be a "qualifying patient" under the provisions of RCW 69.51A. A "qualified patient" means a person who:
      i. Is a patient of a healthcare professional. "Health care professional" means a physician licensed under chapter 28.71 RCW, a physician assistant licensed under chapter 28.50A RCW, an osteopathic physician licensed under chapter 28.72 RCW, an osteopathic physician's assistant licensed under chapter 28.72A RCW, a naturopath licensed under chapter 28.75A RCW, or an advanced registered nurse practitioner licensed under chapter 28.73 RCW; and
      ii. Has been diagnosed by the health care professional as having a terminal or debilitating condition.
   b. Provide valid, signed and dated documentation by a health care professional, licensed in Washington State, stating that the person has, in the healthcare professional's opinion, a terminal or debilitating condition that may benefit from the use of medical marijuana.
   c. The "qualifying patient's" copy of the valid documentation must be retained by the individual, be easily accessible, and presented to facility staff and other appropriate authorities upon request.
   d. The "qualifying patient" will identify a "designated provider", not affiliated with the long term care community, who will be responsible for providing the medical marijuana to the "qualifying patient". There shall be only one designated provider for each qualifying patient, and the designated provider cannot assist more than one qualifying patient.
   e. The designated provider is responsible for bringing the medical marijuana to the qualifying patient and promptly removing the medical marijuana from the premises after client consumption.
      i. Upon arrival at the building, the designated provider must sign in at the front desk, including name, date, and time of arrival.
      ii. Just prior to leaving the building, the provider must sign out at the front desk, including names, date, and time of departure.
Policy and Procedure Considerations

• Develop a notification procedure when marijuana is brought to facility by primary caregiver

• Storage, access and use of marijuana by resident “overseen” by facility although probably safest not to allow staff to be in possession of the marijuana
Policies and Procedure Considerations

• Limit use to resident’s room (edibles)
  • Rights of roommate?

• Storage
  • Locked box
  • Limited to amount one can possess legally

• Will facility administration have access?
Legal Considerations Regarding Medical Marijuana

• Objectives:
  • Examine current legal landscape - State level
  • Examine current legal landscape – Federal level
  • Explore how current law relates to physicians/residents in LTC
  • Review recent actions by DEA
  • Review important court decisions
  • Review Congressional legislative approach
MARIJUANA LAWS BY STATE

Legalized
Adults can purchase, possess and cultivate marijuana for personal use, whether medical or recreational.

Decriminalized
Typically means no arrest, prison time, or criminal record for the first-time possession of a small amount of marijuana for personal use. All of these states, excluding Nebraska, also allow medical marijuana and/or CBD use.

Medical/CBD Use Only
No state-level criminal penalties on the use of medical marijuana. Some of these states have CBD-specific laws, singling out the non-psychoactive component of marijuana.

Illegal
No active laws legalizing the use of marijuana.

SOURCE: www.NORML.COM
Federal Approach to Marijuana

- Controlled Substances Act (CSA) (21 U.S.C. § 841(a))
  - Marijuana is classified as Schedule I (no currently accepted medical use, high potential for abuse; e.g., heroin, LSD)

- DEA
  - August 11, 2016, Acting DEA Administrator Chuck Rosenberg denied petitions (by 2 governors) to reclassify marijuana.
  - DEA stated, “We fully support legitimate medical and scientific research on marijuana and its constituent parts and we will continue to seek ways to make the process for those researchers more efficient and effective.”
U.S. Department of Justice (DOJ)

• Realizing the growing trend in medical marijuana and increasing body of scientific evidence of the efficacy of CBD, as well as the expanding number of states that have legalized medical marijuana, the DOJ issued an official memo to all U.S. Attorneys suggesting “prosecutorial discretion.”

• Deputy Attorney General James M. Cole issued a memo on August 29, 2013 suggesting that the DOJ not prosecute the possession, growth, use or sale of medical marijuana where there are “robust” local laws.
DOJ Memo (from Obama Admin)

“In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above. Indeed, a robust system may affirmatively address those priorities by, for example, implementing effective measures to prevent diversion of marijuana outside of the regulated system and to other states, prohibiting access to marijuana by minors, and replacing an illicit marijuana trade that funds criminal enterprises with a tightly regulated market in which revenues are tracked and accounted for. In those circumstances, consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity. If state enforcement efforts are not sufficiently robust to protect against the harms set forth above, the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms.”

Excerpt from Deputy Attorney General Cole Memo (August 29, 2013)
• Under the Cole memo guidance, in the past four-plus years, the medical cannabis industry continued to evolve with more than half the states now allowing some form of medical cannabis use and commercial activity, and now eight states including California, Colorado, Washington and Nevada permitting recreational or adult use of recreational cannabis.
Congressional Approach to Medical Marijuana

• **The Rohrabacher-Farr amendment** (now titled Rohrabacher-Blumenauer since Rep. Samuel Farr’s retirement in 2017) prevents the Department of Justice from spending federal funds to prosecute cannabis-related activities if they are permitted under state-specific medical marijuana laws.

• a companion amendment to Rohrabacher-Blumenauer sponsored by Pat Leahy in the Senate passed by a voice vote in July without much fanfare or controversy.

• As of now, there is no indication whether either will be included in any new budget amendment. The current spending bill (a/k/a “continuing resolution”) expires at 11:59 PM on Jan. 19
Bipartisan Congressional Support

• Current AG Sessions continues to seek repeal of the Amendments
• “Medical marijuana patients obeying state law should not have to worry about federal arrest or losing their state-regulated source of medicine.” Sen. Barbara Mikulski (D-MD)
About Face?

• AG Jeff Sessions announced Thursday Jan. 4 that he is rescinding the Cole memo, which reflected the Department of Justice's relatively passive policy under the Obama administration since August 2013 on enforcement of federal cannabis laws.

• The landscape has shifted so dramatically in recent years that some of the harshest critics of Sessions were senators and representatives, many of them prominent Republicans, from states with cannabis programs that generate much-needed medicine and tax revenue. They expressed outrage over this action by Sessions, claiming it belies promises he made to them before being confirmed by the Senate.
• Aside from Sessions' announcement being unpopular, it is questionable whether it really has any “teeth” because the medical and even recreational cannabis industry has grown so big that it would be difficult if not impossible to slow it down -- let alone eliminate through federal enforcement.

• Sessions did not announce that there would be a crackdown on cannabis businesses

• It will be left to the discretion of the local US attorneys in each district to decide how and when to enforce the federal laws which doesn’t amount to much of a substantive change in policy.
Pennsylvania Response

• Within hours after Sessions’ announcement, Governor Wolf vowed to protect Pennsylvania's medical marijuana program from federal "overreach."

• Auditor General Eugene DePasquale, who has proposed that the state permit recreational marijuana use, said in his own statement that
  ▪ Sessions "is stuck in the Dark Ages."
  ▪ "He is using finite federal resources to fight a war against drugs that was lost decades ago,"
  ▪ "He showed just how clueless he really is by comparing marijuana to heroin."

• the U.S attorney for Pennsylvania's Middle District said he has no intention to disrupt the state's medical marijuana business.
Practical Considerations for LTC

- What does State law permit?
- Can physicians prescribe, recommend or neither?
- Can nurses store on medical carts (or elsewhere)?
- Can nurses administer?
- How is medical marijuana documented on the MAR?
- Are there designated areas for smoking medical marijuana?
- Can a staff member assist a resident who needs supervised smoking?
- How will qualified caregivers be trained to administer the medication?
- What are the implications for SNFs, physicians, nurses, and caregivers if a caregiver transports medical marijuana across state lines?
Can doctors be prosecuted for signing a certification?

- Pennsylvania’s law explicitly protects doctors from punishment. It states that a physician is not subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege including civil penalty or disciplinary action, solely for his or her participation in the program. Sec. 2103 (A)(3)

- **According to our best information, no doctors have been prosecuted for recommending medical marijuana in states with medical marijuana programs.**
LTC Providers’ Conundrum

Resident rights vs. Federal Law

• 42 C.F.R. § 483.75(b) SNFs must comply with “Federal, State, and local laws and professional standards.”

• What happens when State and local laws and professional standards permit medical marijuana but Federal law does not?

• How can physicians/SNFs reconcile the disconnect?

• 42 C.F.R. § 483.10 Resident rights, including right of accommodation of needs, freedom of choice, and self-administration of medications.
Related Concerns

• Can physicians, nurses, therapists, other care givers use medical marijuana if prescribed by their physician and in accord with State law?
• Does it make a difference if the use, in conformity with a physician’s Rx is off premises and on the employee’s own time?
• Can a physician, NP, PA, nurse or other employee be terminated for using medical marijuana – even if prescribed and the use conforms to State law?
Recommendations

• Consult State LTC Ombudsman
• Consult State survey agency
• Consult State Departments of Health and DEA
• Obtain consent from resident, POA or guardian
• Consult competent legal counsel
• Review guidance from professional organizations
• Develop and implement appropriate policies and procedures (revise prn)
• Adopt (and periodically review) appropriate guidelines
• Involve compliance and ethics programs as well as QAPI Committee
Recommendations (cont’d)

• Ethical Considerations/Committee?
• Consult Insurance carrier/broker
• Enroll in list serves, etc.
  • https://www.pa.gov/guides/pennsylvania-medical-marijuana-program/
  • Marijunadofctors.com
  • Mpp.org (marijuana policy project)
  • Norml.org (organization working to reform marijuana policy)
  • https://www.pamedsoc.org/advocate/topics/medical-marijuana (PA Medical Society)
  • https://www.facebook.com/thecannaproject/
  • http://icrs.co/ (International Cannabis Research Society)