

The Medical Cannabis Advocate's Handbook

MODEL STATEWIDE LEGISLATION

MEDICAL CANNABIS PROGRAM ACT

THE PEOPLE OF THE STATE DO ENACT AS FOLLOWS:

The definitions in this apply throughout this chapter unless the context clearly requires otherwise.

"Defined relationship" means that the parties have agreed to become collective members and shall cultivate, manufacture, sell, dispense, distribute, transport, or deliver cannabis and cannabis products on behalf of other members who are qualified patients and/or designated caregivers, as provided by as provided for under this Chapter.

"Designated Caregiver" means a person, over the age of 18, who has been designated by a qualified patient to assist in the cultivation, procurement, production, transportation, storage, and administration of medical cannabis, and has received an Identification Card issued by the STATE DEPARTMENT OF PUBLIC HEALTH.

"Dispense" means the selection, measuring, packaging, labeling, delivery, or distribution or sale of cannabis by a Medical Cannabis Dispensing Center, a Medical Cannabis Delivery Service, a Medical Cannabis Manufacturer, or a Medical Cannabis Cultivator, as defined by this act, to a qualifying patient or a designated caregiver.

"Labeling" means all labels and other written, printed, or graphic matter (a) upon any cannabis intended for medical use, or (b) accompanying such cannabis.

"Cannabis Plant" means a plant of the species Cannabis Sativa that has flowers and/or is greater than 12 inches in height and 12 inches in diameter.

"Medical Cannabis Cultivator" means any individual or not for profit entity organized to cultivate, dispense, and deliver cannabis and cannabis products for medical use to Medical Cannabis Delivery Services, Medical Cannabis Dispensing Centers, or Medical Cannabis Product Manufacturers, or their own qualifying patients and/or designated caregiver members.

"Medical Cannabis Delivery Service" means any not for profit entity organized to cultivate, dispense, and deliver cannabis and cannabis products for medical use to patients and their designated caregivers who are members.

"Medical Cannabis Dispensing Center" means any not for profit entity organized to cultivate and dispense cannabis and cannabis products through storefronts for medical use to patients and their designated caregivers who are members.

"Medical Cannabis Laboratory" means any non-residential facility licensed by the

Department of Public Health to analyze dried, extracted, cured, food-based and other forms of cannabis for: a) contaminants such as mold and insects, and/or b) concentrations of cannabinoids such as Tetrahydrocannabinol (THC) and Cannabidiol (CBD) and other chemical constituents.

"Medical cannabis products" means products that contain cannabis or cannabis extracts, and are intended for human consumption or application, including, but not limited to, edible products, tinctures, and lotions.

"Medical Cannabis Product Manufacturer" means any person or not for profit entity organized to manufacture medical cannabis products meant for dispensing within Medical Cannabis Dispensing Center and/or Medical Cannabis Delivery Service and/or directly to the manufacturer's qualified patient and/or designated caregiver members, if organized as a collective. Medical Cannabis Product Manufacturers shall be members or have a defined relationship with Medical Cannabis Dispensing Centers and/or Medical Cannabis Delivery Services, as provided for under this Chapter. Medical Cannabis Product Manufacturers may be members or have a defined relationship with Medical Cannabis Cultivators. Medical Cannabis Product Manufacturers do not include qualified patients and designated caregivers who produce medical cannabis products for their own individual use or for the use of a patient under their care.

"Qualified Patient" means a person who has been diagnosed with a serious medical condition and, having been examined by a physician, it has been determined would benefit from the use of cannabis and has obtained an Identification Card from the STATE DEPARTMENT OF PUBLIC HEALTH.

"Seedling" means a cannabis plant that has no flowers and/or that is less than 12 inches in height and/or less than 12 inches in diameter.

"Serious Medical Condition" means all of the following medical conditions:

- (1) Acquired immune deficiency syndrome (AIDS).
- (2) Anorexia.
- (3) Arthritis.
- (4) Cachexia.
- (5) Cancer.
- (6) Chronic pain.

(7) Glaucoma.

(8) Migraine.

(9) Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis.

(10) Seizures, including, but not limited to, seizures associated with epilepsy.

(11) Severe nausea.

(12) Any other chronic or persistent medical symptom that either:

(A) Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-336).

(B) If not alleviated, may cause serious harm to the patient's safety or physical or mental health.

"Visiting Qualified Patient" means a person with a medical condition who is currently participating in another state's medical cannabis program, and is in possession of a valid out-of-state medical cannabis program identification card or its equivalent.

CRIMINAL EXEMPTIONS

STATE CRIMINAL PENAL CODE relating to the possession of marijuana, and STATE CRIMINAL PENAL CODE relating to the cultivation of marijuana, shall not apply to a qualified patient, or to a patient's designated caregiver, who possesses or cultivates cannabis for the personal medical purposes of the qualified patient upon the written recommendation or approval of a physician.

Notwithstanding any other provision of law, no physician in this state shall be punished, or denied any right or privilege, for having recommended cannabis to a patient for medical purposes.

LIMITS

(A) A qualified patient or designated caregiver may possess no more than eight ounces of dried cannabis per qualified patient. In addition, a qualified patient or primary caregiver may also maintain no more than 12 cannabis plants per qualified patient.

(B) If a qualified patient or designated caregiver has a doctor's recommendation that

this quantity does not meet the qualified patient's medical needs, the qualified patient or designated caregiver may possess an amount of cannabis consistent with the patient's needs.

(C) Only the dried mature processed flowers of female cannabis plant or the plant conversion shall be considered when determining allowable quantities of cannabis under this section.

Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the STATE in order collectively or cooperatively to cultivate cannabis for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under THE STATE'S PENAL CODE.

A state or local law enforcement agency or officer shall not refuse to accept an identification card issued by the department unless the state or local law enforcement agency or officer has reasonable cause to believe that the information contained in the card is false or fraudulent, or the card is being used fraudulently.

ID PROGRAM

A. The STATE'S DEPARTMENT OF PUBLIC HEALTH shall establish and maintain a program for the issuance of identification cards to qualified patients who satisfy the requirements of this article and apply to the identification card program.

B. The department shall establish and maintain a 24-hour, toll-free telephone number that will enable state and local law enforcement officers to have immediate access to information necessary to verify the validity of an identification card issued by the department, as well as a secure, web-based verification system.

C. Every county health department, or the county's designee, shall do all of the following:

- (1) Provide applications upon request to individuals seeking to join the identification card program.
- (2) Receive and process completed applications.
- (3) Maintain records of identification card programs.
- (4) Utilize protocols developed by the STATE'S PUBLIC HEALTH DEPARTMENT.
- (5) Issue identification cards developed by the STATE'S PUBLIC HEALTH DEPARTMENT.

MENT to approved applicants and designated primary caregivers.

D. The STATE'S PUBLIC HEALTH DEPARTMENT shall develop all of the following:

(1) Protocols that shall be used by a county health department or the county's designee to implement the responsibilities described in subdivision B, including, but not limited to, protocols to confirm the accuracy of information contained in an application and to protect the confidentiality of program records.

(2) Application forms that shall be issued to requesting applicants.

(3) An identification card that identifies a person authorized to engage in the medical use of cannabis and an identification card that identifies the person's designated caregiver, if any. The two identification cards developed pursuant to this paragraph shall be easily distinguishable from each other.

E. No person or designated caregiver in possession of a valid identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of medical cannabis in an amount established pursuant to this article, unless there is reasonable cause to believe that the information contained in the card is false or falsified, the card has been obtained by means of fraud, or the person is otherwise in violation of the provisions of this article.

F. A person who seeks an identification card shall pay the fee, and provide all of the following to the county health department or the county's designee on a form developed and provided by the department:

(1) The name of the person, and proof of his or her residency within the county.

(2) Written documentation by the attending physician in the person's medical records stating that the person has been diagnosed with a serious medical condition and that the medical use of cannabis is appropriate.

(3) The name, office address, office telephone number, and medical license number of the person's attending physician.

(4) The name of up to 2 designated caregivers, if any.

(5) A government-issued photo identification card of the person and of the designated caregiver(s), if any. If the applicant is a person under 18 years of age, a certified copy of a birth certificate shall be deemed sufficient proof of identity.

G. Within 30 days of receipt of an application for an identification card, a county health department or the county's designee shall do all of the following:

(1) For purposes of processing the application, verify that the information contained in the application is accurate. If the person is less than 18 years of age, the county health department or its designee shall also contact the parent with legal authority to make medical decisions, legal guardian, or other person or entity with legal authority to make medical decisions, to verify the information.

(2) Verify with the Medical Board of THE STATE or the Osteopathic Medical Board of THE STATE that the attending physician has a license in good standing to practice medicine or osteopathy in the state; or the licensing board for Naturopathic Doctors, Physicians Assistants, Chiropractors, Acupuncturists, or other medical professional with diagnostic and treatment responsibilities.

(3) Contact the attending physician by facsimile, telephone, or mail to confirm that the medical records submitted by the patient are a true and correct copy of those contained in the physician's office records. When contacted by a county health department or the county's designee, the attending physician shall confirm or deny that the contents of the medical records are accurate.

(4) Take a photograph or otherwise obtain an electronically transmissible image of the applicant and of the designated caregiver(s), if any.

(5) Approve or deny the application. During the application process, a certified copy of the application shall be acceptable as a temporary Identification Card and shall provide the applicant with all rights and privileges provided by an Identification Card.

(b) If the county health department or the county's designee approves the application, it shall, within 24 hours, or by the end of the next working day of approving the application, electronically transmit the following information to the STATE'S PUBLIC HEALTH DEPARTMENT:

(1) A unique user identification number of the applicant.

(2) The date of expiration of the identification card.

(3) The name and telephone number of the county health department or the county's designee that has approved the application.

(c) The county health department or the county's designee shall issue an identification card to the applicant and to his or her designated caregiver(s), if any, within five work-

ing days of approving the application.

(d) In any case involving an incomplete application, the applicant shall assume responsibility for rectifying the deficiency. The county shall have 14 days from the receipt of information from the applicant pursuant to this subdivision to approve or deny the application.

H. An identification card issued by the county health department shall be serially numbered and shall contain all of the following:

(1) A unique user identification number of the cardholder.

(2) The date of expiration of the identification card.

(3) The name and telephone number of the county health department or the county's designee that has approved the application.

(4) A 24-hour, toll-free telephone number, to be maintained by the department, that will enable state and local law enforcement officers to have immediate access to information necessary to verify the validity of the card, and the address of the secure website maintained for the same purposes.

(5) Photo identification of the cardholder.

(b) A separate identification card shall be issued to the person's designated caregiver(s), if any, and shall include a photo identification of the caregiver.

I. The county health department or the county's designee may deny an application only for any of the following reasons:

(1) The applicant did not provide the information required, and upon notice of the deficiency did not provide the information within 30 days.

(2) The county health department or the county's designee determines that the information provided was false.

(3) The applicant does not meet the criteria set forth in this article.

J. Any person whose application has been denied pursuant to subdivision may appeal that decision to the department. The county health department or the county's designee shall make available a telephone number or address to which the denied applicant can direct an appeal.

K. An identification card shall be valid for a period of two years.

L. Upon renewal of an identification card, the county health department or its designee shall verify all new information and may verify any other information that has not changed. The county health department or the county's designee shall transmit its determination of approval or denial of a renewal to the department.

M. The department shall establish application and renewal fees for persons seeking to obtain or renew identification cards that are sufficient to cover the expenses incurred by the department, including the startup cost, the cost of reduced fees for those who qualify, the cost of identifying and developing a cost-effective Internet Web-based system, and the cost of maintaining the 24-hour toll-free telephone number. Each county health department or the county's designee may charge an additional fee for all costs incurred by the county or the county's designee for administering the program pursuant to this article.

N. Upon satisfactory proof of participation and eligibility in a social services program, each beneficiary shall receive a 50 percent reduction in the fees established pursuant to this section.

O. A person who possesses an identification card shall:

(1) Within seven days, notify the county health department or the county's designee of any change in the person's attending physician or designated primary caregiver, if any.

(2) If the designated caregiver has been changed, the previous designated caregiver shall return his or her identification card to the department or to the county health department or the county's designee.

EMPLOYMENT

A. Nothing in this article shall require any accommodation of any medical use of cannabis on the property or premises of any place of employment or during the hours of employment, or on the property or premises of any jail, correctional facility, or other type of penal institution in which prisoners reside or persons under arrest are detained.

B. Nothing in this article shall require a governmental, private, or any other health insurance provider or health care service plan to be liable for any claim for reimbursement for the medical use of cannabis.

C. It is unlawful for an employer to discriminate against a person in hiring, termination, or any term or condition of employment or otherwise penalize a person, if the discrimi-

nation is based solely upon either of the following:

(1) The person's status as a qualified patient or a designated caregiver.

(2) The person's positive drug test for cannabis, provided the person is a qualified patient and the medical use of cannabis does not occur on the property or premises of the place of employment or during the hours of employment.

D. A person who has suffered discrimination in violation of subdivision (C) may institute and prosecute in his or her own name and on his or her own behalf a civil action for damages, injunctive relief, and any other appropriate equitable relief to protect the peaceable exercise of the right or rights secured.

E. Paragraph (2) of subdivision (C) shall not apply when an employer employs a person in a safety-sensitive position. For purposes of this section, a safety-sensitive position means a position in law enforcement, or a position in which medical cannabis-affected performance could clearly endanger the health and safety of others. A safety-sensitive position shall have all of the following general characteristics:

(1) Its duties involve a greater than normal level of trust, responsibility for, or impact on the health and safety of others.

(2) Errors in judgment, inattentiveness, or diminished coordination, dexterity, or composure while performing its duties could clearly result in mistakes that would endanger the health and safety of others.

(3) An employee in a position of this nature works independently, or performs tasks of a nature that it cannot safely be assumed that mistakes like those described in subparagraph (2) could be prevented by a supervisor or another employee.

DUI MJ

Nothing in this chapter shall authorize the operation of a vehicle while under the influence of cannabis.

A qualified patient shall not be considered to be operating a vehicle under the influence solely for having cannabis metabolites in his or her system, being a qualified patient, or being in possession of cannabis.

HOUSING

A qualified patient or designated caregiver shall not be subject to any civil penalty, including but not limited to the loss of property, or eviction solely for one or more of

the following:

- 1) testing positive for cannabis use, or
- 2) for being a qualified patient or designated caregiver, or
- 3) for exercising rights as defined by Section XX of this Chapter, or
- 4) for use of cannabis, or
- 5) as an employee or agent of a Medical Cannabis Dispensing Center, Medical Cannabis Delivery Service, Medical Cannabis Cultivator, or Medical Cannabis Product Manufacturer.

CHILD CUSTODY

As used in this subdivision, "habitual or continual illegal use of controlled substances" does not include the following:

- 1) testing positive for cannabis use, or
- 2) for being a qualified patient or designated caregiver, or
- 3) for exercising rights as defined by Section XX of this Chapter, or
- 4) for use of cannabis, or
- 5) acting as an employee or agent of a Medical Cannabis Dispensing Center, Medical Cannabis Delivery Service, Medical Cannabis Cultivator, or Medical Cannabis Product Manufacturer.

RECIPROCITY

A visiting qualified patient shall have the same rights and privileges under STATE law as a qualified patient.

SEARCH, SEIZURE, FORFEITURE

The fact that a person is a qualified patient or designated caregiver, or is the employee or agent of a Medical Cannabis Dispensing Center, Medical Cannabis Delivery Service, Medical Cannabis Cultivator, or Medical Cannabis Product Manufacturer does not, alone:

- (1) Constitute probable cause to search the person or the person's property; or

(2) Subject the person or the person's property to inspection by any governmental agency.

Except as otherwise provided in this subsection, if officers of a state or local law enforcement agency seize cannabis, drug paraphernalia or other related property from a person engaged or assisting in the medical use of cannabis:

(1) The law enforcement agency shall ensure that the cannabis, drug paraphernalia or other related property is not destroyed while in the possession of the law enforcement agency.

(2) Any property interest of the person from whom the cannabis, drug paraphernalia or other related property was seized must not be forfeited pursuant to any provision of law providing for the forfeiture of property, except as part of a sentence imposed after conviction of a criminal offense.

Upon a determination by the district attorney of the county in which the cannabis, drug paraphernalia or other related property was seized, or the district attorney's designee, that the person from whom the cannabis, drug paraphernalia or other related property was seized is engaging in or assisting in the medical use of cannabis in accordance with the provisions of this chapter, the law enforcement agency shall immediately return to that person any usable cannabis, cannabis plants, drug paraphernalia or other related property that was seized.

The determination of a district attorney or the district attorney's designee that a person is engaging in or assisting in the medical use of cannabis in accordance with the provisions of this chapter shall be deemed to be evidenced by:

- (a) A decision not to prosecute;
- (b) The dismissal of charges; or
- (c) Acquittal.

TRANSPLANTS

For the purposes of medical care, including organ and tissue transplants, a qualified patient's authorized use of cannabis shall be considered the equivalent of the authorized use of any other medication used at the direction of a physician, and shall not constitute the use of an illicit substance.

COLLECTIVE MEMBERS' DUTIES

Qualified patients and designated caregivers who associate within the STATE in order to collectively or cooperatively cultivate cannabis for medical purposes, may share responsibility for acquiring and supplying the resources required to produce and process cannabis for medical use such as, for example, money, a location for a collective garden; equipment, supplies, and labor necessary to plant, grow, and harvest cannabis; cannabis plants, seeds, and cuttings; and equipment, supplies, and labor necessary for proper construction, plumbing, wiring, and ventilation of a garden of cannabis plants. It is the sole discretion of the collective or cooperative to determine the requirements for membership within the collective or cooperative, and responsibilities and duties may be carried out by any or all members of the collective or cooperative. It is also within the discretion of the collective or cooperative to determine allocation of the costs and benefits of the efforts of the collective or cooperative, including the allocation of reasonable compensation for services rendered amongst those associated. Testing by a medical cannabis laboratory shall remain voluntary.

FEES

Any and all governmental fees and taxes related to the registration or regulation of qualified patients and designated caregivers or Medical Cannabis Dispensing Centers or Medical Cannabis Delivery Services shall be used only to recover the cost of the services provided, including education, inspections, and civil enforcement of standards under this article. No fees or taxes may be levied to generate funds for any other service or program within the STATE.

MEDICAL CANNABIS DISPENSING CENTERS

Cities and counties within the STATE may enact regulations and ordinances governing Medical Cannabis Dispensing Centers, and the manufacture and labeling of medical cannabis products. These regulations and ordinances shall not ban, either explicitly or implicitly, the operation of Medical Cannabis Dispensing Centers. Testing by a medical cannabis laboratory shall remain voluntary. Any violation of these regulations and ordinances shall not be deemed a violation of the Medical Marijuana Program Act.

Nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article.

SALES

Retail sales between Medical Cannabis Dispensing Centers, Medical Cannabis

Delivery Services, Medical Cannabis Cultivators, Medical Cannabis Product Manufacturers, and qualified patients and designated caregivers shall be permitted under this chapter.

MEDICAL CANNABIS DELIVERY COLLECTIVES

Cities and counties within the STATE may enact regulations and ordinances governing Medical Cannabis Delivery Services. These regulations and ordinances shall not ban, either explicitly or implicitly, the operation of Medical Cannabis Delivery Services. Testing by a medical cannabis laboratory shall remain voluntary. Any violation of these regulations and ordinances shall not be deemed a violation of the Medical Marijuana Program Act.

Nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article.

MEDICAL CANNABIS PRODUCT MANUFACTURING

A. Cities and counties within the STATE may enact regulations and ordinances governing the manufacturing and labeling of medical cannabis products. Testing by a medical cannabis laboratory shall remain voluntary.

B. The manufacture of edible medical cannabis products shall be regulated as the type of food or beverage being manufactured, and no additional requirements made.

C. Enforcement shall be determined by STATE RETAIL FOOD CODE. Any violation of these regulations and ordinances shall not be deemed a violation of the Medical Marijuana Program Act.

Nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article.

CULTIVATION

A. Medical Cannabis Cultivators fall within three classes. Class 2 and Class 3 registration shall be renewable annually. Registration classes are as follows:

(1) Class 1. Less than 25 qualified patients and designated caregivers wishing to collectively cultivate cannabis plants and manufacture medical cannabis products for exclusive use by their members are exempt from registration.

(b)Class 2. Collectives of qualified patients and designated caregivers with between 25 and 50 members, the collective shall register with the STATE'S DEPARTMENT Of

AGRICULTURE.

The application for a Class 2 registration shall include the name of at least 1 collective or cooperative member, the address and contact information for that member, a statement that the collective wishes to cultivate collectively and is seeking a Class 2 registration, and any accompanying fees necessary, as determined by the STATE'S DEPARTMENT Of AGRICULTURE. Accompanying this application, the collective shall submit each collective member's Identification Number, or, in the alternative, documentation of a defined relationship with one or more Medical Cannabis Dispensing Center(s) and/or Medical Cannabis Delivery Service(s) and/or Medical Cannabis Product Manufacturer(s). Renewal procedures shall be determined by the STATE'S DEPARTMENT Of AGRICULTURE.

(c)Class 3. Collectives of qualified patients and designated caregivers with more than 51 members, the collective shall register with the STATE'S DEPARTMENT Of AGRICULTURE.

The application for a Class 3 registration shall include the name of at least 5 collective or cooperative members, the address and contact information for those members, a statement that the collective wishes to cultivate collectively and is seeking a Class 3 registration, and any accompanying fees necessary, as determined by the STATE'S DEPARTMENT Of AGRICULTURE. The STATE'S DEPARTMENT Of AGRICULTURE shall determine a graduated fee scale for Class 3 registration applicants. Accompanying this application, the collective shall submit each collective member's Identification Number, or, in the alternative, documentation of a defined relationship with one or more Medical Cannabis Dispensing Center(s) and/or Medical Cannabis Delivery Service(s) and/or Medical Cannabis Product Manufacturer(s).

The STATE'S DEPARTMENT Of AGRICULTURE shall promulgate regulations in order to regulate Class 3 registrations. These regulations may include inspections and quality controls as well as requirements for defined contractual relationships with Medical Cannabis Dispensing Centers and security requirements.

TESTING

The Department of Health Services shall promulgate regulations to authorize and license medical cannabis laboratories in the testing of dried, extracted, cured, food-based and other forms of cannabis. Such testing may include the analysis of contaminants and chemical composition, or other methods of investigation intended to advance the understanding of cannabis's therapeutic benefits and to improve the health and welfare of qualified patients in the state.

RESCHEDULING

The State Board of Pharmacy shall classify cannabis as a controlled substance in Schedule III, IV or V. The State Board of Pharmacy shall classify cannabis no later than 180 days after the effective date of this chapter.

SEVERABILITY

If any provision of this measure or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the measure which can be given effect without the invalid provision or application, and to this end the provisions of this measure are severable.