

FREQUENTLY ASKED QUESTIONS: Act 16 of 2016 – THE MEDICAL MARIJUANA PROGRAM

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GENERAL INFORMATION

What is medical marijuana?

Under Act 16 of 2016 (the Act or Medical Marijuana Program), the term “medical marijuana” refers to marijuana obtained for a certified medical use by a Pennsylvania resident with a serious medical condition and is limited by statute in Pennsylvania to the following forms:

- Pill;
- Oil;
- Topical forms, including gel, creams or ointments;
- A form medically appropriate for administration by vaporization or nebulization, excluding dry leaf or plant form;
- Tincture; and
- Liquid.

Why was medical marijuana use approved in Pennsylvania?

Studies have shown that medical marijuana can assist patients suffering from certain serious medical conditions by alleviating pain and improving their quality of life.

What is a “serious medical condition” under the Act?

The statute defines a “serious medical condition” as any one of the following:

- 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
- HIV (Human Immunodeficiency Virus) / AIDS (Acquired Immune Deficiency Syndrome)
- Huntington’s Disease
- Inflammatory Bowel Syndrome
- 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

Does the Medical Marijuana Program protect against federal prosecution?

No. The U.S. Department of Justice (DOJ) has the authority to enforce civil and criminal federal laws relating to marijuana possession and use, regardless of state law. Growing, distributing, and/or possessing marijuana in any capacity, except through a federally-approved research program, is a violation of federal law, and no state or local law provides a legal defense to a violation of federal law.

In light of current DOJ guidance, however, it may be unlikely that federal authorities would bring civil enforcement actions or criminal investigations and prosecutions against growers/processors, dispensaries, physicians, seriously ill individuals or caregivers as long as they are acting pursuant to the Act. A [memorandum](#) from the DOJ, dated August 29, 2013, explains the priorities of federal authorities regarding marijuana possession and use, including state medical marijuana programs.

When will the department begin issuing regulations to implement the Medical Marijuana Program?

The department has started working on temporary regulations in order to implement the Act. Those temporary regulations will explain the program's operation, including how applications are to be submitted by growers/processors, dispensaries, caregivers, patients, and physicians, and will be in place for two years from the date they are published. During that time period, the department will be preparing to issue formal regulations.

The department intends to roll out the temporary regulations sequentially, first addressing the requirements for growers/processors so that those entities can come on line and begin to produce products, then detailing requirements for dispensaries and physicians, followed closely by requirements for the registration of caregivers and patients.

When will applications to become growers/processors, dispensaries, patients, caregivers, and registered physicians become available?

The department began the process of implementing the state's Medical Marijuana Program when Governor Tom Wolf signed Senate Bill 3 into law on April 17, 2016.

The implementation of the program is expected to take between 18 and 24 months and, when completed, will offer medical marijuana to patients who are residents of Pennsylvania and under a physician's care for the treatment of a serious medical condition as defined by the Act. Applications will become available by the end of the year upon notice in the Pennsylvania Bulletin.

FOR PATIENTS AND CAREGIVERS

Who will be able to obtain medical marijuana?

Under the Medical Marijuana Program, patients who are residents of the commonwealth and have a serious medical condition as certified by a physician will be able to obtain medical marijuana at approved dispensaries that are located in the commonwealth and have a validly-issued permit from the department.

A “caregiver” who is designated by the patient and approved by the department will be able to obtain medical marijuana from an approved dispensary located in the commonwealth that has a validly-issued permit from the department in order for the caregiver to deliver medical marijuana to the patient.

Who is considered a “caregiver” under the Act?

The statute defines a “caregiver” as an individual, 21 years of age or older unless otherwise authorized by the department, who is designated by a patient or, if the patient is under 18 years of age, an individual that is a parent or legal guardian of the patient, or an individual designated by a parent or legal guardian, or an appropriate individual approved by the department upon a sufficient showing that no parent or legal guardian is appropriate or available.

Caregivers must undergo a criminal history background check, apply to the department for an identification card, and be registered with the department. The department will make applications for caregivers available on its website.

How may patients participate in the Medical Marijuana Program?

To purchase and use medical marijuana under Act 16, a patient must be under the continuing care of a physician who is registered with the department. The physician may then provide a patient with a signed certification, which includes the patient’s name, date of birth, and address; the patient’s serious medical condition; a statement by the certifying physician that the patient has that serious medical condition and is under the continuing care of the physician for that condition; the date of issuance; any requirement or limitation concerning the appropriate form of medical marijuana and limitation on duration of use, if applicable, including whether the patient is terminally ill; and the name, address, telephone number and signature of the physician. The patient must then apply to the department for an identification card.

Once a patient receives an identification card, he or she may purchase medical marijuana at a department-approved and -permitted dispensary in the commonwealth in the amount and form and for the time period allowed by the law. The department will be developing a standard certification form that will be made available to physicians upon request, as well as an application form for patients and caregivers. The department will make the application and certification forms available on its website.

There is a \$50 processing fee for patient applications, but the department may waive or reduce the fee if the applicant demonstrates financial hardship on the application.

How will patients apply for medical marijuana identification cards?

A patient will be able to obtain an identification card with a certification from a registered physician and a completed, approved application submitted to the department. The department will make it as easy as possible for patients to apply for medical marijuana identification cards and will make applications available to patients on its website.

May patients with serious medical conditions receive medical marijuana if they are under 18?

Yes. Patients under the age of 18 with a serious medical condition may obtain medical marijuana through a caregiver. For patients under the age of 18, a caregiver may be a parent or

legal guardian, a person designated by a parent or guardian, or an individual approved by the department upon a sufficient showing that no parent or legal guardian is appropriate or available. The caregiver must undergo a criminal history background check, apply to the department for an identification card, and be registered with the department. The patient must also have an identification card issued by the department. The department will make applications available to patients on its website.

May someone else obtain medical marijuana on behalf of a patient?

Yes. When a patient applies to the department for an identification card, he or she may designate up to two caregivers. To be eligible, caregivers must also apply for and obtain a medical marijuana identification card from the department and be registered with the department. Applications for caregivers will be available on the department's website.

There is a \$50 processing fee for caregiver applications, but the department may waive or reduce the fee if the applicant demonstrates financial hardship on the application.

May a caregiver be designated by more than one patient?

Yes. A caregiver may be designated by up to five patients. Before obtaining medical marijuana for a patient, however, a caregiver must apply for and obtain a medical marijuana identification card and be registered with the department.

Where will patients or caregivers obtain medical marijuana?

Registered patients or caregivers with an identification card issued by the department may purchase medical marijuana at an approved dispensary that has a valid permit from the department and is located in the commonwealth. The department may issue permits to up to 50 dispensaries across the state. Each dispensary may have up to three locations in the state from which to dispense medical marijuana.

Will there be enough medical marijuana for all approved patients and caregivers?

The department will be reviewing a number of factors to determine the placement of dispensaries across the state in order to ensure that medical marijuana is available for patients with serious medical conditions. The department will be conducting a full population study during the next six months that will include: (1) the location and number of patients suffering from serious medical conditions; and (2) their ability to access public transportation to get to a dispensary.

May patients obtain medical marijuana from out of state and transport it back to Pennsylvania while they wait for it to become available in this state?

Only a minor under 18 years of age with a serious medical condition may obtain medical marijuana from another state through a *parent or guardian*. For up to two years following the effective date of the Act, Section 2106 of the Medical Marijuana Act provides that if a *parent or guardian* of a minor under 18 years of age with a serious medical condition lawfully obtains medical marijuana from another state, territory or country to be administered to that minor, the

parent or guardian does not violate the Act, or the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act. The form of marijuana obtained in the other state must be in the form made lawful by Pennsylvania's Medical Marijuana Program. Patients, parents and guardians also must comply with the application and certification requirements of the Act, as developed by the department. The department intends to publish a temporary regulation regarding the implementation of Section 2106.

Neither Section 2106 nor the Act permits adult patients 18 years of age and older, or their caregivers, to obtain medical marijuana from another state. For adult patients 18 years of age and older, medical marijuana may only be obtained from a department-approved and permitted dispensary located in the commonwealth as permitted by the Act.

The department urges caution if a parent or guardian chooses to obtain medical marijuana in another state for a minor under the age of 18 with a serious medical condition. The department has no authority or ability to monitor the quality of medical marijuana lawfully available or obtained in another state. The U.S. Food and Drug Administration (FDA) has issued warning letters to firms that market unapproved new drugs or forms of marijuana that are not approved by the FDA for the diagnosis, cure, mitigation, treatment, or prevention of any disease.

In addition, the DOJ has the authority to enforce civil and criminal federal laws relating to marijuana possession and use, regardless of state law. Growing, distributing, or possessing marijuana in any capacity, except through a federally-approved research program, is a violation of federal law, and no state or local law provides a legal defense to a violation of federal law. In light of current DOJ guidance, however, it may be unlikely that federal authorities will bring civil enforcement actions or criminal investigations and prosecutions against seriously ill minors or their parents or guardians as long as they comply with the requirements of the Act. A [memorandum](#) from the DOJ explains the priorities of federal authorities regarding marijuana use and possession, including medical marijuana programs.

FOR THOSE INTERESTED IN BECOMING APPROVED GROWERS/PROCESSORS

What are the requirements to become an approved grower/processor of medical marijuana in Pennsylvania?

The department is allowed to issue permits initially for no more than 25 growers/processors. No more than five grower/processors may also be issued a dispensary permit.

The application process requires an applicant – at a minimum – to:

- Apply for a permit with the department before growing\processing marijuana.
- Provide information in the permit application, including, but not limited to:
 - Description of business organization and activities
 - Federal and state criminal background check
 - Statement indicating the applicant is of good moral character
 - Ability to maintain effective security and control to prevent diversion, abuse or other illegal conduct
 - Provide a diversity plan.
- Complete a two-hour training course.
- Submit a permit application with:

- Initial non-refundable fee of \$10,000
- Permit fee of \$200,000, which is refundable if the permit is not granted
- Proof of \$2 million in capital (\$500,000 of which must be on deposit in a financial institution)

As permitted by the Act, the department may provide for other requirements through temporary regulations that will be issued before the application process begins.

FOR THOSE INTERESTED IN BECOMING APPROVED DISPENSARIES

What are the requirements to become a dispensary of medical marijuana in Pennsylvania?

The department will issue permits initially for no more than 50 dispensaries. Each dispensary may have no more than three separate locations.

The application process requires an applicant – at a minimum – to:

- Apply for a permit with the department before dispensing marijuana.
- Provide information in the permit application, including but not limited to:
 - Description of its business organization and activities
 - Federal and state criminal background check
 - Statement indicating the applicant is of good moral character
 - Ability to maintain effective security and control to prevent diversion, abuse or other illegal conduct
 - Provide a diversity plan.
- Complete a two-hour training course
- Submit an application with:
 - Initial non-refundable fee of \$5,000
 - Permit fee of \$30,000, which is refundable if the permit is not granted
 - Proof of \$150,000 in capital.

As permitted by the Act, the department may provide for other requirements through regulation.

FOR PHYSICIANS

What is the process for physicians to become registered to participate in the Medical Marijuana Program? When will applications be available?

A physician shall:

- Apply to the department to be registered with the program.
- Demonstrate to the department by training or expertise that he or she is qualified in treating serious medical conditions.
- Successfully complete the required four-hour course established by the department.
- Hold a valid, unexpired, unrevoked, unsuspended Pennsylvania license to practice medicine.

Physician registrations will become available by the end of the year upon notice in the Pennsylvania Bulletin.

What will the education process be for physicians who become certified to prescribe medical marijuana?

The Department of Health will be developing a four-hour training course for physicians regarding the latest scientific research on medical marijuana, including the risks and benefits of using medical marijuana and other information deemed necessary by the department.

Will the DOH website contain a list of registered physicians?

The department will establish and maintain an electronic database that includes a list of physicians that are registered with the program.

ADDITIONAL INFORMATION ON PENNSYLVANIA'S MEDICAL MARIJUANA PROGRAM

Who will assist the department in making changes to the Medical Marijuana Program in Pennsylvania?

The new law creates the Medical Marijuana Advisory Board within the Department of Health. Members include the Secretary of Health; the Physician General; State Police Commissioner; Chair of the State Board of Pharmacy; Commissioner of Professional & Occupational Affairs; President of the Pennsylvania Chiefs of Police Association; President of the Pennsylvania District Attorneys Association; members to be appointed by the Governor and six appointees from the legislative caucuses who are knowledgeable and experienced in issues relating to care and treatment of individuals with a serious medical condition, geriatric or pediatric or clinical research. One member appointed by the Governor shall be a patient, a family or household member of a patient or a patient advocate.

What else will the Medical Marijuana Program do for Pennsylvania?

The Medical Marijuana Program also includes funding for research institutions to study the use of medical marijuana to treat other serious conditions. In addition, the Act establishes an advisory committee that will review these research findings and make recommendations to the legislature for changes to the Act.

In addition to funding for implementation and research, the Act further provides revenue to the Department of Drug and Alcohol Programs for drug abuse prevention, counseling and treatment services, as well as to the Pennsylvania Commission on Crime and Delinquency for distribution to local police departments.

ADDITIONAL QUESTIONS?

Please send us an email at RA-DHMedMarijuana@pa.gov if you have a question that has not been addressed by the information above.