



U.S. Virgin Islands Medical Cannabis Patient Care Act Summary

On January 19, 2019, Gov. Albert Bryan Jr. signed into law the Medical Cannabis Patient Care Act, sponsored by Sen. Positive T.A. Nelson. The bill will set up a robust medical cannabis program for both Virgin Islands residents and medical tourists.

Qualifying for the Program:

- Qualifying patients will apply to the Office of Cannabis Regulation (OCR) for a registration card that allows them to use, grow, and safety access medical cannabis. To qualify, patients must have a qualifying debilitating medical condition and a written certification issued by a healthcare practitioner with whom they have a bona-fide relationship.
 - Certifications can be signed by an MD, DO, naturopath, homeopath, chiropractor, physician's assistant, or nurse practitioner.
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Qualifying Conditions:

- The qualifying conditions are: cancer, glaucoma, HIV/AIDS, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, ulcerative colitis, agitation of Alzheimer's disease, PTSD, traumatic brain injury, hospice care, Parkinson's disease, Huntington's disease, arthritis, diabetes, chronic pain, neuropathic pain, autism, opiate use disorder, or the treatment of these conditions or conditions that cause cachexia or wasting, severe nausea, seizures, or severe and persistent muscle spasms.
 - The OCR may approve additional conditions or their treatments.
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Possession Limits:

- Registered patients who are Virgin Islands residents may possess up to four ounces of cannabis and an amount of cannabis products allowed by regulation. Patients whose ID cards specify they can cultivate cannabis may grow 12 plants in a secure location and possess the cannabis harvested from those plants.
 - Nonresident patients may possess up to three ounces of cannabis, plus an amount of cannabis products allowed by regulation.
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Caregivers:

- Patients may designate a caregiver to assist them with the medical use of cannabis. Caregivers are also issued ID cards from the OCR.
 - A patient may have more than one caregiver if the patient — or the person responsible for making medical decisions on their behalf — submits documentation showing that additional help is needed due to the patient’s age or medical condition.
 - Caregivers may pick up a patient’s cannabis from a dispensary on their behalf.
 - Either a patient or their caregiver — not both — may cultivate plants for a patient. Patients will notify the OCR of whether they or the caregiver will be designated to cultivate.
 - Caregivers must be 21 or older.
 - Caregivers may only assist up to three patients (including themselves), unless the patient is admitted to a residential care or medical facility where the caregiver works.
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Medical Cannabis Businesses:

- The OCR, within the Department of Licensing, is charged with licensing cultivation facilities, cannabis testing facilities, cannabis product manufacturing facilities, and dispensaries. It appears every qualified applicant will be licensed.
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Regulatory Oversight:

- The OCR is responsible for ensuring patients’ ability to get high-quality medicine in a timely fashion.
- A nine-member advisory board will have substantial authority, including oversight of the OCR and establishing policies for it to carry out. The advisory board will meet at least six times per year.
- The advisory board will include one or two representatives from each the health department, the department of agriculture, the department of licensing and consumer affairs, a farmer appointed by the agriculture commissioner, healthcare practitioners who are knowledgeable about medical cannabis, a disability rights advocate, and an economist or person with expertise in finance.

The advisory board will issue regulations, including:

- Developing rules for non-resident medical cannabis tourism;
- Establishing a testing lab on each major district, initially operated by private entities with annual contracts via an RFP (the Virgin Islands could operate its own later);
- Developing education and certification requirements for medical cannabis staffers;
- Establishing a list of approved medical cannabis establishment vendors;
- Developing rules about sensitive locations (such as schools and churches) and addressing street-level and media-based marketing around them;
- Developing security, recordkeeping, health and safety, transportation, employment, training, labeling, and oversight requirements, along with restrictions on advertising, signage, and display of cannabis; and
- Promulgating requirements for safe, accurate, and appropriately childproofed packaging and labeling.

Limitations and Prohibitions:

- A dispensary may not dispense more than three ounces of dried cannabis per patient, per 14-day period. The sales will be logged on a confidential website to ensure compliance.
- Patients may not drive, operate a boat, train, or aircraft, or undertake any task that would be negligent or professional malpractice while under the influence of cannabis.
- Medical cannabis businesses that sell medical cannabis to non-cardholders face felony penalties. Cardholders who do so face a misdemeanor carrying up to a year imprisonment.
- Cardholders who violate the law can have their ID cards revoked or suspended and, where applicable, face criminal penalties. Cards must be suspended permanently if they sell cannabis.
- Cannabis could not be smoked in any public place or place that is open to the public, and no establishment is required to allow a guest to smoke cannabis on the property.
- Landlords are not required to allow cannabis cultivation on their properties.

Legal Protections:

- The bill protects patients, caregivers, medical cannabis businesses and their agents, attorneys, and medical practitioners from arrest, prosecution, or penalties for actions allowed by the bill.
- Until 25 days after applications are available, a healthcare practitioner's certification serves as a registry identification card.
- Once a patient submits their application and healthcare practitioner's certification, a copy of those materials serve as a temporary ID card until the OCR acts on the patient's application.
- Registered patients are protected from discrimination in housing, school enrollment, child custody and visitation, and eligibility for medical care, including organ transplants. In addition, employers are to treat off-site, off-hours medical cannabis use as they would pharmaceutical medication, unless federal law, regulations, or contracts require otherwise. Employers may continue to prohibit employees from working under the influence of cannabis or using cannabis at work or during work hours and may presume a patient to be impaired if, during the work day, they have a THC concentration of 150 nanograms/ml or higher in their blood or urine.

Visiting Patients:

- Medical cannabis patients who are registered in other territories, states, or countries — or who have been residents of the USVI for less than 45 days — can use and obtain medical cannabis in the Virgin Islands. They need to submit their documentation to the OCR and to have a medical condition that qualifies under the Virgin Islands law.
- Also, patients who are *not* registered for medical cannabis in their home jurisdiction can use medical cannabis under the recommendation of a Virgin Islands medical cannabis physician and can apply for and receive a non-resident ID card.

Affirmative Defense:

- Individuals with qualifying medical conditions may raise a defense in court for their medical use of marijuana — and, if proven, be acquitted — if a healthcare practitioner treating the patient has stated he or she believes the patient may find relief from medical cannabis.
 - The defense applies if the patient possessed no more than four ounces of cannabis, 12 cannabis plants, cultivated in a secure location, and the cannabis produced by those plants.
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Fees, Taxes, and Regulatory Costs:

- The program must be funded entirely by the fees and taxes it generates within two years. An initial loan of \$500,000 must be repaid within the two years.
 - A 10% excise fee is levied on transfers to dispensaries and manufacturing facilities.
 - A 5% excise fee is levied on sales to patients.
 - The tax revenue will be used to repay the initial loan and to: address addictive behavior, drug education and rehabilitation programs (12.5%); defray licensing costs (12.5%); help fund the Department of Agriculture's Agriculture Depot Program (10%); help fund sports development, training, and travel through the Department of Sports, Parks and Recreation (10%); support government-owned buildings in the territory via the Department of Public Works for Infrastructure Maintenance and Improvement (10%); promote medical tourism (5%); fund medical cannabis education and training for law enforcement (5%); fund an apprenticeship program run by the Department of Labor with the Department of Education (5%); and help fund performing arts programs via the Department of Planning and Natural Resources for the Council of the Arts (5%). Once loans have been repaid, 10% will go to the government employees' retirement system.
 - Medical cannabis business application fees range from no more than \$500 (for a tier 1 license to grow no more than 100 plants, if the applicant is a farmer) to no more than \$5,000 (for cannabis product manufacturers, dispensaries, and the largest growers). Half of the application fees are refundable to unsuccessful applicants.
 - The OCR will set a licensing and renewal fee, which may not exceed the application fee. All fees may be adjusted annually for inflation.
 - Virgin Island resident patients will pay an annual registry fee of no more than \$50.
 - Fees for visiting patients will be set by the OCR, and the maximum fees range from \$50 for five days to \$100 for 30 days.
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Timeline:

- Draft rules are due within 120 days of the effective date. They will be final no more than 60 days later, following a 30-day public comment period.
- The OCR must begin issuing registry ID cards within 120 days of the effective date.
- The OCR must grant registrations to qualified medical cannabis business applicants within 90 days of the applications' submission.