



# An Overview of Florida's "Low-THC" and Palliative Care Medical Marijuana Law

In 2014, the Florida Legislature passed, and Gov. Rick Scott signed, a bill that attempted to exempt a limited class of individuals with certain medical disorders and their legal representatives from criminal penalties for using and possessing low-THC cannabis that was ordered for the patients by their physicians. Then, in 2016, the legislature passed a bill intended to improve the law, which would also allow terminally ill patients to access all forms of medical cannabis. The law places very heavy burdens on physicians, arguably forcing them to violate federal law in order to recommend medical marijuana. Because the law only applies to a very specific type of marijuana or terminally ill patients, and because the bill depends on physicians violating federal law, MPP does **not** consider Florida a medical marijuana state.

## ***What type of marijuana does the law apply to?***

The law protects certain patients from penalties for using "low-THC cannabis," which is defined as containing "0.8 percent or less of tetrahydrocannabinol and more than 10 percent of cannabidiol."

The law also has a second provision for terminally ill patients, defined as those who are expected to die within one year of diagnosis without "life-sustaining procedures," who may use any type of medical cannabis.

Smoking medical cannabis, which does not include use of a vaporizer, is prohibited for both groups of patients.

## ***Who qualifies for this limited program?***

Patients with cancer or a "physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms" may qualify for the program if no satisfactory alternative treatment options exist.

Patients who are terminally ill must have medical marijuana recommend by two doctors, one of whom must be a specialist, and must have considered all FDA approved treatments and given written, informed consent.

A doctor must have been treating the patient for at least three months before registering the patient, which will make access very difficult for anyone moving to Florida, since there is no provision for recognizing out-of-state ID cards.

## ***Can minors with seizure disorders use low-THC medical marijuana under this law?***

Yes, but using it anywhere on school grounds or in a public place is a criminal offense.

## ***Do qualifying patients need to obtain an ID card?***

Yes, the 2016 changes added an ID card requirement. Before dispensing medical cannabis, a

dispensary must check both the patient's ID card and the compassionate use registry.

### ***Are caregivers allowed?***

Yes, the law allows a legal representative to act on a patient's behalf, but the caregiver must be a "healthcare surrogate acting pursuant to the qualifying patient's written consent" and must register with the Health Department. The name of the patient they are assisting must be on caregivers' ID cards.

### ***Are there restrictions on who will manufacture the low-THC cannabis?***

The Department of Health has issued authorizations to **the five organizations** permitted under current law to cultivate and dispense medical cannabis for and to qualified patients. If the state reaches 250,000 patients, three additional organizations may be licensed. The five organizations were required to be geographically dispersed, with one each in northwest Florida, northeast Florida, central Florida, southeast Florida, and southwest Florida. Among other onerous requirements, only entities that have been in operation as a registered nursery in Florida for at least 30 continuous years were allowed to apply for one of the initial low-THC cultivation licenses.

The 2016 law eases some of the onerous requirements in the 2014 law, such as by reducing the required bond once a business is serving over 1,000 patients, but adds many new ones, including detailed rules regarding seed to sale tracking, security cameras, and transportation of the marijuana.

### ***How does the law affect restrictions on marijuana paraphernalia?***

A doctor must recommend a "cannabis delivery device," such as a vaporizer, and patients can only purchase that device at a licensed dispensing organization.

### ***Can qualified patients grow their own medical marijuana?***

No. The law only allows licensed cultivators to grow medical marijuana.

### ***Are there special requirements placed on Florida physicians by this law?***

Yes. The physician must add his or her qualifying patient to the "compassionate use registry" maintained by the Department of Health and then "order" the low-THC marijuana for the patient from one of the five registered manufacturers. The doctor must also specify the amount, which must not be more than a 45-day supply. "Ordering" medical cannabis will likely violate federal law. Because physicians need a federal DEA license to prescribe medicines, they are very unlikely to openly break federal law, meaning the law is likely unworkable.

The law also requires a physician to complete and pass an eight-hour class, administered by the Florida Medical Association, and subsequent exam on the medical applications of medical marijuana before he or she is allowed to register a patient to be part of the program.

### ***When did this law take effect?***

The law became effective on June 16, 2014; the addition of medical cannabis for terminally ill patients took effect when Gov. Rick Scott signed the bill on March 25, 2016.

Available online at: <https://www.flsenate.gov/Session/Bill/2016/0307/BillText/e1/PDF>