

Summary of Changes to Maine’s Medical Marijuana Program with the Passage of LD 1296

In 2011, [Rep. Deb Sanderson](#) (R-Chelsea) sponsored legislation – [LD 1296](#) – that was passed by her legislative colleagues and signed into law by Gov. Paul LePage. LD 1296 goes into effect on September 27. It tweaks several elements of Maine’s medical marijuana program. Most notably, the new law makes patient registration optional, meaning patients no longer must register with the Maine Department of Health and Human Services in order to be protected from arrest for using marijuana in compliance with their doctors’ recommendations and statutory restrictions.

Other significant changes to Maine’s medical marijuana law are outlined below.

Collectives prohibited – The bill prohibits the operation of medical marijuana “collectives,” defined as “an association, cooperative, affiliation or group of primary caregivers who physically assist each other in the act of cultivation, processing or distribution of marijuana for medical use for the benefit of the members of the collective.” Dispensaries are permitted under Maine law, but must operate with a state registration.

Possession of harvested marijuana – In addition to six mature marijuana plants, and notwithstanding the 2.5-ounce possession limit, patients and caregivers are permitted to possess harvested marijuana in various stages of processing “in order to ensure the patient is able to maintain supply and meet personal needs.”

Donation of excess marijuana – Caregivers, who are permitted to cultivate marijuana for up to five patients, may donate excess marijuana to a dispensary or another caregiver. They cannot be compensated for such transfers.

Optional registration for caregivers who are family members – Primary caregivers who cultivate marijuana for a patient who is a member of that caregiver’s family or household need not register with the department. “Family member” is defined as “a spouse, domestic partner, child, sibling, aunt, uncle, niece, nephew, parent, stepparent, grandparent or grandchild.” Also of note, two or more qualifying patients who are members of the same household and cultivating their own marijuana may share one enclosed, locked facility for cultivation

Authorized conduct by physicians – The new law restates provisions making it explicit that physicians are not subject to sanctions simply for providing recommendations to patients unless they fail to properly evaluate a patient or abide the proper standard of care. The bill also requires physicians providing recommendations to minor patients to explain the risks and benefits to the parent or guardian of the minor patient and to seek the input of a “consulting physician.” The department will maintain a list of approved consulting physicians.

Prohibition of seizures – The bill prohibits seizures by law enforcement of marijuana lawfully possessed by patients and requires the return of unlawfully seized marijuana within seven days. Patients whose marijuana has been unlawfully seized and not returned within seven days may file a claim in District Court for the return of their marijuana.

Affirmative defense for possession of excess marijuana – Generally speaking, patients may not possess an amount of marijuana in excess of the amounts permitted by law (six mature plants and 2.5 ounces of prepared marijuana). However, patients charged with possession of excess marijuana may assert the medical use of marijuana as a defense to such charges. In order to successfully assert the defense, the patient must demonstrate that his or her “necessary medical use or cultivation circumstances warranted exceeding the amount of marijuana allowed” and “was reasonably necessary to ensure the uninterrupted availability of marijuana” for treatment purposes. Those who are unable to assert the defense or fail to do so and possess less than 2.5 ounces of excess marijuana will be charged with possession of marijuana, a civil offense punishable by fines of up to \$1,000 depending on the amount. Possession of more than 2.5 ounces of excess marijuana is a felony.

Addition of debilitating medical conditions – The bill provides a process by which members of the public can petition the department to add conditions or treatments to the list of debilitating medical conditions.

Changes to registry ID cards – For those patients who do choose to register with the department, registry ID cards will no longer be required to include the patient’s address, date of birth, or photograph. Instead, the card will include only the patient’s name, date of issuance and expiration, and a random identification number. Separately, the bill also states that possession of or application for a registry ID card “is not evidence of unlawful conduct” and may not be used to support the search of that person or that person's property.

Penalty for fraud – The bill added a civil penalty to the law for “misrepresentation to a law enforcement official any fact or circumstance relating to the possession or medical use of marijuana under this chapter to avoid arrest or prosecution.” It is also a penalty for a patient to obtain marijuana from more than one source with the result being the patient possessing more than 2.5 ounces of marijuana. In each case, a \$200 fine applies.

Local regulations – The law already allowed municipalities to adopt ordinances limiting the number of dispensaries that could operate in the municipality or to regulate such dispensaries; however, the bill adds a provision prohibiting municipalities from adopting ordinances “duplicative of or more restrictive” than Maine’s medical marijuana law.