



Overview of States' Flawed High-CBD Laws

Since early 2014, at least 20 states have enacted limited laws that were intended to allow patients with intractable seizure disorders — and, increasingly, other medical conditions — to use certain strains of medical cannabis preparations. In some cases, those laws were later replaced by or supplemented with comprehensive medical cannabis laws.

Unlike the 33 states that have comprehensive medical marijuana laws,[\[1\]](#) these 16 laws only allow strains that are low in THC (which has medical value, including by relieving nausea) and rich in another beneficial compound of marijuana, cannabidiol (CBD). Low-THC laws vary widely in their scope. One law — South Dakota's — merely allows cannabidiol once federal law changes.

While it is commendable that legislators are taking some action to allow medical cannabis preparations, these laws unfortunately leave behind the vast majority of patients who could benefit from medical cannabis. Most of the CBD-focused laws exclude patients with intractable pain, cancer, or AIDS-related nausea or wasting, muscle spasms, or any condition other than seizure disorders. These limited laws also leave behind patients whose seizures respond only to strains of cannabis with greater quantities of THC.

Even patients with intractable epilepsy who could benefit from high-CBD oils cannot expect much relief from most of these laws. All but three of the laws — Georgia's, Iowa's, and Virginia's — fail to allow for realistic, in-state access, apart from clinical trials for pharmaceutical drugs. (A fourth state, Texas, also allows in-state production, but it requires doctors to “prescribe” the cannabis extracts, which puts physicians at risk under federal law.)

However, with the 2018 federal Farm Bill's legalization of hemp sales and production, the availability of very low-THC products labeled as containing CBD is increasing nationwide.[\[2\]](#) Unfortunately, though, many of the “CBD” products available are untested and largely unregulated.[\[3\]](#) Some “CBD” products do not actually contain the amount of CBD that is listed on the label — or any at all — or they may also contain dangerous compounds such as heavy metals.[\[4\]](#)

State	Condition(s)	Type of Cannabis	Means of Access	Workability Issues
Alabama	“A chronic or debilitating disease or medical condition including one that produces seizures for which a person is under treatment.”	Extracts that are “free from plant material” with no more than 3% THC relative to CBD	The law established a study on an experimental cannabis-based drug — Epidiolex — through the University of Alabama at Birmingham, but does not include a way for other patients to access cannabis. Other patients would have to attempt to obtain cannabis oils out-of-state.	No in-state access to medical cannabis preparations. In 2019, the legislature established a medical cannabis study commission. The Senate passed a bill in both 2019 and 2020, but the House did not act on it before COVID derailed its work in 2020. The law creates both an affirmative defense and a complete defense for CBD, but it does not appear to prevent arrests or prosecutions.
Georgia	Seizure disorders, ALS, intractable pain, PTSD (for adults), cancer, MS, Crohn’s, mitochondrial disease, Parkinson’s, autism (for minors), Tourette’s, epidermolysis bullosa, Alzheimer’s, AIDS, peripheral neuropathy, and sickle cell disease	Cannabis oil with no more than 5% THC and with at least an equal amount of CBD	Cannabis preparations will be made by up to six private producers, along with two designated universities (if they participate). Patients will be allowed to obtain the low-THC oil from licensed dispensaries or specially licensed pharmacies (if the latter participate).	None. However, the program leaves behind patients who could benefit from more THC.

State	Condition(s)	Type of Cannabis	Means of Access	Workability Issues
Indiana	Treatment-resistant epilepsy only; this means patients must have failed to respond to at least two other treatment options	Extracts are to be composed of 0.3% THC or less and at least 5% CBD	None. There is no means of gaining in-state access.	No in-state access.
Iowa	Chronic pain, cancer (in some cases), multiple sclerosis, autism, seizures, AIDS or HIV, Crohn's disease, amyotrophic lateral sclerosis, Parkinson's disease, or any terminal illness	Extracts with a total of 4.5 grams of THC every 90 days. More THC is allowed if one's medical provider specifies a specific, greater quantity is needed. (But that could create federal law issues for the provider.)	Up to five dispensaries and two manufacturers are allowed.	None, other than the financial challenges created by the limited types of cannabis allowed. One manufacturer and two dispensaries closed in Spring 2020 due to the program not being economically viable. In addition, the program leaves behind patients who could benefit from more THC and whose doctors are not comfortable recommending specific quantities due to federal law.
Kansas	Not limited to patients; anyone may possess CBD	Cannabidiol	None, although limited CBD production might be allowed under the state's new hemp research program.	Because CBD is simply excluded from the state's definition of "marijuana" — but THC remains illegal — any CBD product must contain no traces of THC. Without in-state access to laboratory- tested CBD products, patients will be unable to verify THC content.

State	Condition(s)	Type of Cannabis	Means of Access	Workability Issues
Kentucky	Not specified	Cannabidiol	None. The law fails to include a source for CBD. It does not make it legal for anyone to produce the marijuana that CBD would be extracted from in the state.	Cannabidiol must be transferred pursuant to a written order of a physician practicing at a hospital or clinic affiliated with a public Kentucky university with a medical school. However, issuing such an order would break federal law. Those participating in an FDA trial would also be protected.
Mississippi	Debilitating epileptic conditions	"CBD oil" with more than 15% CBD and no more than 0.5% THC	CBD oil must be dispensed by the University of Mississippi's Department of Pharmacy Service. Only three entities, all affiliated with universities, can possess or produce cannabis oil.	The law would only work if universities were willing to openly break federal law, or if federal law changes. That has not happened. It is also not clear if patients are protected from arrest, or if they merely have an affirmative defense that prevents a conviction.
Nebraska	Intractable seizures and treatment of resistant seizures	Liquid or solid extracts or oils with more than 10% CBD and no more than 0.3% THC	Access via the University of Nebraska Medical Center, conducting a pilot study on CBD	Either the university and associated physicians would need to be willing to openly break federal law or they would have to have federal permission for the study.
North Carolina	Intractable epilepsy	Hemp extracts with at least 5% CBD and less than 0.9% THC	None. Cannabis must be obtained from another jurisdiction.	This program lacks in-state access to cannabis oils.

State	Condition(s)	Type of Cannabis	Means of Access	Workability Issues
South Carolina	Lennox Gastaut Syndrome, Dravet Syndrome, or “any other severe form of epilepsy that is not adequately treated by traditional medical therapies”	Cannabidiol or any “manufacture, salt, derivative, mixture, or preparation” of marijuana that contains 0.9% or less THC and over 15% CBD; extracts provided at trials must have at least 98% CBD and no more than 0.9% THC	Access via licensed industrial hemp production, which is defined as less than 0.3% THC. The law also allows for cannabis via federally approved sources for clinical trials.	The law leaves behind patients needing additional amounts of THC and whose conditions do not qualify.
South Dakota	Not specifically listed	Cannabidiol, after it is approved by the federal Food and Drug Administration (FDA)	None, other than FDA-approved CBD-based products	This leaves behind patients needing products other than Epidiolex (a CBD-only medication the FDA approved for certain rare seizure disorders in 2018), and with conditions that Epidiolex is not prescribed for.

State	Condition(s)	Type of Cannabis	Means of Access	Workability Issues
Tennessee	For individuals: intractable seizures For clinical trials: any disease	For individuals: cannabis oil with less than 0.9% of THC For clinical trials: cannabis oil with less than 0.6% of THC	Tennessee universities may cultivate marijuana, make oils, and dispense them to patients, but only as part of an approved research study. Patients may possess low-THC oils obtained pursuant to a "legal order or recommendation from the issuing state" if they or an immediate family member was diagnosed with epilepsy by a Tennessee doctor.	Participating universities would have to have approval from the "drug enforcement administration located in the state," which is unlikely since the only federally authorized grower of marijuana is the University of Mississippi. Regarding out-of-state access, patients would have to travel through states where cannabis is illegal.
Texas	Epilepsy, multiple sclerosis, spasticity, ALS, autism, terminal illness, and neuro-degenerative diseases	"Low THC cannabis" with at least 10% CBD and no more than 0.5% THC	Dispensaries regulated by the Department of Public Safety may cultivate marijuana plants, process them, and distribute low-THC cannabis.	For a patient to qualify, their neurologist must "prescribe" low-THC cannabis, yet doing so puts physicians at risk under federal law. In addition, the law leaves behind those who need more THC and those whose conditions do not qualify, and there are too few distributors in a huge state.

State	Condition(s)	Type of Cannabis	Means of Access	Workability Issues
Virginia	Any diagnosed condition or disease	Cannabis extracts with at least five milligrams of either CBD or THC-A and no more than 10 milligrams of THC per dose	The state has licensed five “pharmaceutical processors” to manufacture and dispense CBD and THC-A oils; a total of 25 dispensing locations are allowed.	None known. In light of changes to the law in 2020, MPP may reclassify Virginia as a comprehensive medical cannabis state, depending on how the law is implemented.
Wisconsin	Not specifically listed	Creates an exception to the definition of THC (which is illegal under state law) for patients who possess “cannabidiol in a form without a psychoactive effect” and a doctor’s certification	Physicians and pharmacies that have been issued an investigational drug permit by the FDA may dispense cannabidiol. In late 2017, the state enacted a pilot program to license industrial hemp production. However, it is set to expire in October 2020.	The program is limited to hemp/CBD and does not help patients needing preparations with THC.
Wyoming	Intractable epilepsy that does not respond to other treatments and other seizure disorders	“Hemp extracts” with less than 0.3% THC and at least 5% CBD	Wyoming has a hemp program, which was approved by the USDA.	The law is limited to hemp, leaving behind patients needing more than 0.3% THC.

^[1] For a list of those states and key provisions of the laws, see: <https://www.mpp.org/issues/medical-marijuana/state-by-state-medical-marijuana-laws/key-aspects-of-state-and-d-c-medical-marijuana-laws/>

^[2] For more details, see the Brookings Institute’s “The Farm Bill, hemp legalization and the status of CBD: An explainer.” Available at:

<https://www.brookings.edu/blog/fixgov/2018/12/14/the-farm-bill-hemp-and-cbd-explainer/>

^[3] The possible exception would be if the products were made pursuant to a state-regulated hemp industrial program that includes lab testing and other regulations.

^[4] Will Maupin, "The FDA recently found that many CBD products aren't always truthful about what they contain," *Inlander*, July 16, 2020. Lisa Fletcher, "The risk of contaminants and false labeling in the exploding CBD industry," *CBS Austin*, May 15, 2019.
