



The Delaware Medical Marijuana Act

What does the Delaware Medical Marijuana Act do?

The Delaware Medical Marijuana Act (Title 16 Ch. 49 A), which is largely based on the Marijuana Policy Project's model bill, removes criminal sanctions and provides protection from arrest for the compassionate, doctor-recommended use of medical marijuana by Delaware patients with serious medical conditions. The law took effect on July 1, 2011, and some favorable revisions have been made since then.

Patients are not allowed to grow their own medicine, but they may possess up to six ounces of marijuana. The program includes tightly regulated, limited distribution of medical marijuana by not-for-profit compassion centers. Currently, [six compassion centers](#) are operating in the state.

Allowing medical use: To qualify to use medical cannabis, the patient's physician must have certified, in writing, that the patient has a specified debilitating medical condition and that the patient would receive therapeutic benefit from medical marijuana. Patients then must send the Delaware Department of Health and Social Services (DHSS) a completed application (obtained from DHSS), including a copy of the written certification, and DHSS will issue an ID card after verifying the information. As long as the patient is in compliance with the law and in possession of an ID card, there will be no arrest.

Qualifying medical conditions: For adults, the qualifying conditions are: terminal illness; cancer; HIV/AIDS; decompensated cirrhosis; multiple sclerosis; amyotrophic lateral sclerosis (ALS); agitation of Alzheimer's disease; autism with aggressive behavior; PTSD; chronic debilitating migraines or new daily persistent headache; or a medical condition or treatment that produces wasting syndrome, intractable nausea, seizures, severe and persistent muscle spasms, or severe debilitating pain that has not responded to other treatments for more than three months or for which other treatments produced serious side effects.

For minors, who must also have parental consent, the qualifying conditions are intractable epilepsy, severe debilitating autism, or a chronic or debilitating disease or medical condition where the patient has failed treatment and that involves cachexia or wasting syndrome; intractable nausea; severe, painful, and persistent muscle spasms; chronic debilitating migraines; or daily persistent headaches.

Beginning on September 9, 2020, pursuant to SB 24, a patient may also qualify if their physician certifies that the patient has a severe and debilitating condition, current standard care practices and treatments have been exhausted, and there are grounds to support that the patient may benefit from this treatment.

Compassion centers (dispensaries): Delaware’s law does not allow patients or caregivers to grow marijuana at home. Instead, it provides patients with access to their medicine at state-regulated, not-for-profit compassion centers, which also cultivate the medical marijuana. All compassion centers are subject to inspection, and all of their staff must undergo background checks. Compassion centers may not advertise medical marijuana sales in print or broadcast and may not share office space with physicians. The law also creates an additional felony with a possible two-year prison term and a \$2,000 fine to punish anyone who sells medical marijuana to someone unauthorized to possess it.

Patient age and possession limits: Registered patients may possess up to six ounces for their medical use. Caregivers, who may serve up to five patients, can pick up medicine for very ill, homebound patients and possess it on their behalf. Compassion centers may only dispense three ounces to a patient every 14 days, and a patient may only register with one compassion center.

Patient medical necessity affirmative defense: Delaware’s law provides a medical necessity affirmative defense that can be raised in limited circumstances by patients who have submitted valid applications for medical marijuana IDs but have yet to receive them. The defense prevents a conviction, but not a citation or arrest.
