



Marijuana Policy Project
P.O. Box 77492
Washington, DC 20013
p: (202) 462-5747 • f: (202) 232-0442
info@mpp.org • www.mpp.org

“We change laws.”

Legal Protections and Medical Cannabis

A core component of medical cannabis laws is protection from state criminal and civil penalties.

Patients with serious conditions and doctors’ recommendations must be afforded protections from both arrests and convictions. A few early state laws only provided protection from conviction, which left patients subject to traumatic and costly arrests. Typically, patients must register with the state for full protections, but many states allow a doctor’s certification to serve an ID card while paperwork is processed.

States should include protections for patients who are traveling between states that allow medical cannabis. Just as patents need to be able to bring and fill their prescriptions when traveling, they also need to be able to have uninterrupted treatment with medical cannabis.

Legal protections must also cover caregivers, physicians, medical cannabis businesses, lawyers who advise businesses, and staff at such businesses. For a medical cannabis program to be fully functional, all professionals and loved ones must be able to perform their responsibilities without fear of state legal penalties.

Patients’ protections should also include anti-discrimination provisions for employment, child custody, and medical care. Because the Americans with Disabilities Act does not extend to medical cannabis, which is illegal under federal law, most new medical cannabis laws include similar legal protections for medical cannabis patients.

Sample Language:

Patients and caregivers

(xx) A cardholder who possesses a valid registry identification card is not subject to arrest, prosecution, or penalty in any manner, or denial of any right or privilege, including any civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau for:

- (1) the medical use of cannabis pursuant to this chapter, if the cardholder does not possess more than the allowable amount of cannabis;
- (2) reimbursement by a registered qualifying patient to the patient’s registered designated caregiver for direct costs incurred by the registered designated caregiver for assisting with the registered qualifying patient’s medical use of cannabis;
- (3) transferring cannabis to a testing facility for testing;
- (4) compensating a dispensary or a testing facility for goods or services provided; and
- (5) offering or providing cannabis to a cardholder for a registered qualifying patient’s medical use, to a nonresident cardholder, or to a dispensary if nothing of value is transferred in return and the person giving the cannabis does not knowingly cause the recipient to possess more than the allowable amount of cannabis.

(xx) There is a presumption that a qualifying patient or designated caregiver is engaged in the medical use of cannabis pursuant to this chapter if the cardholder is in possession of a registry identification card and an amount of cannabis that does not exceed the allowable amount of cannabis. The presumption may be rebutted by evidence that conduct related to cannabis was not for the purpose of treating or alleviating a qualifying patient's debilitating medical condition or symptoms associated with the qualifying patient's debilitating medical condition pursuant to this chapter.

(xx) Until a qualifying patient who has submitted an application and the required fee to the department receives a registry identification card or a rejection, a copy of the individual's application, written certification, and proof that the application was submitted to the department shall be deemed a registry identification card.

(xx) Until a designated caregiver whose qualifying patient has submitted an application and the required fee receives a registry identification card or a rejection, a copy of the a qualifying patient's application, written certification, and proof that the application was submitted to the department shall be deemed a registry identification card.

(xx) Until 25 days after the department makes applications available, a valid, written certification issued within the previous year shall be deemed a registry identification card for a qualifying patient.

(xx) Until 25 days after the department makes applications available, the following shall be deemed a designated caregiver registry identification card:

(1) a copy of a qualifying patient's valid written certification issued within the previous year; and

(2) a signed affidavit attesting that the person has significant responsibility for managing the well-being of the patient and that the person has been chosen to assist the qualifying patient.

Visiting patients

(xx) A nonresident cardholder shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by a business or occupational or professional licensing board or entity, for the transporting, purchasing, possessing, or using medical cannabis pursuant to this chapter if the nonresident cardholder does not possess more than an allowable amount of cannabis.

Doctors

(xx) A practitioner shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by the Pennsylvania Medical Board or by any other occupational or professional licensing board or bureau, solely for providing written certifications or for otherwise stating that, in the practitioner's professional opinion, a patient is likely to receive therapeutic or palliative benefit from the medical use of cannabis to treat or alleviate the patient's serious or debilitating medical condition or symptoms associated with the serious

or debilitating medical condition, provided that nothing in this chapter shall prevent a practitioner from being sanctioned for:

- (1) issuing a written certification to a patient with whom the practitioner does not have a bona fide practitioner-patient relationship; or
- (2) failing to properly evaluate a patient's medical condition.

Legal professionals

(xx) It is the intent of the General Assembly that individuals and organizations engaged in activities governed by this Act have liberal access to legal counsel. Therefore, the provision of legal services to individuals or organizations engaged in, or considering engaging in, activities governed by this Act shall not be construed as a violation of any statute, ordinance, or regulation.

Dispensaries

(xx) A dispensary or a dispensary agent is not subject to prosecution, search, or inspection, except by the department pursuant to this chapter, seizure, or penalty in any manner; and may not be denied any right or privilege, including civil penalty or disciplinary action by a court or business licensing board or entity, for acting pursuant to this chapter and rules authorized by this chapter to:

- (1) possess, transport, and store cannabis and cannabis products;
- (2) deliver, transfer, and transport cannabis to testing facilities and compensate testing facilities for services provided;
- (3) accept cannabis offered by a cardholder or nonresident cardholder if nothing of value is exchanged in return;
- (4) purchase or otherwise acquire cannabis from cultivation facilities or dispensaries, and cannabis products from cannabis product manufacturing facilities or dispensaries; and
- (5) deliver, sell, supply, transfer, or transport cannabis, cannabis products, and cannabis paraphernalia, and related supplies and educational materials to cardholders, nonresident cardholders, and dispensaries.

Manufacturing facilities

(xx) A cannabis product manufacturing facility or a cannabis product manufacturing facility agent is not subject to prosecution, search, or inspection, except by the department pursuant to this chapter, seizure, or penalty in any manner, and may not be denied any right or privilege, including civil penalty or disciplinary action by a court or business licensing board or entity, for acting pursuant to this chapter and rules authorized by this chapter to:

- (1) purchase or otherwise acquire cannabis from cultivation facilities, and cannabis products or cannabis from cannabis product manufacturing facilities;
- (2) possess, produce, process, manufacture, compound, convert, prepare, pack, repack, and store cannabis and cannabis products;
- (3) deliver, transfer, or transport cannabis, cannabis products, cannabis paraphernalia, and related supplies and educational materials to dispensaries and cannabis product manufacturing facilities;
- (4) deliver, transfer, or transport cannabis to testing facilities and compensate testing facilities for services provided; and
- (5) deliver, sell, supply, transfer, or transport cannabis, cannabis products, cannabis paraphernalia, and related supplies and educational materials to cannabis product

manufacturing facilities or dispensaries.

Cultivation facilities

(xx) A cultivation facility or a cultivation facility agent is not subject to prosecution, search, or inspection, except by the department pursuant to this chapter seizure, or penalty in any manner, and may not be denied any right or privilege, including civil penalty or disciplinary action by a court or business licensing board or entity, for acting pursuant to this chapter and rules authorized by this chapter to:

(1) possess, plant, propagate, cultivate, grow, harvest, produce, process, manufacture, compound, convert, prepare, pack, repack, or store cannabis;

(2) deliver, transfer, or transport cannabis to testing facilities and compensate testing facilities for services provided;

(3) accept cannabis offered by a cardholder or nonresident cardholder if nothing of value is exchanged in return;

(4) purchase or otherwise acquire cannabis from cultivation facilities;

(5) purchase cannabis seeds from cardholders, nonresident cardholders, and the equivalent of a medical cannabis establishment that is registered in another jurisdiction; and

(6) deliver, sell, supply, transfer, or transport cannabis, cannabis paraphernalia, and related supplies and educational materials to cultivation facilities and dispensaries.

Testing facilities

(xx) A testing facility or testing facility agent is not subject to prosecution, search, or inspection, except by the department pursuant to this chapter, seizure, or penalty in any manner, and may not be denied any right or privilege, including civil penalty or disciplinary action by a court or business licensing board or entity, for acting pursuant to this chapter and rules authorized by this chapter to:

(1) acquire, possess, transport, and store cannabis and cannabis products obtained from cardholders, nonresident cardholders, and medical cannabis establishments;

(2) return the cannabis and cannabis products to the cardholders, nonresident cardholders, and medical cannabis establishment from whom it was obtained;

(3) test cannabis, including for potency, pesticides, mold, or contaminants; and

(4) receive compensation for those services.

General

(xx) Any cannabis, cannabis product, cannabis paraphernalia, or other interest in or right to property that is possessed, owned, or used in connection with the medical use of cannabis as allowed under this chapter, or acts incidental to such use, shall not be seized or forfeited. This chapter shall not prevent the seizure or forfeiture of cannabis exceeding the amounts allowed under this chapter, nor shall it prevent seizure or forfeiture if the basis for the action is unrelated to the cannabis that is possessed, manufactured, transferred, or used pursuant to this chapter.

(xx) Possession of, or application for, a registry identification card does not constitute probable cause or reasonable suspicion, nor shall it be used to support a search of the person or property of the person possessing or applying for the registry identification card, or otherwise subject the person or property of the person to inspection by any governmental agency.

(xx) For the purposes of Pennsylvania law, activities related to medical cannabis shall be considered lawful as long as they are in accordance with this chapter.

(xx) No law enforcement officer employed by an agency which receives Commonwealth or local government funds shall expend any Commonwealth or local resources, including the officer's time, to effect any arrest or seizure of cannabis, or conduct any investigation, on the sole basis of activity the officer believes to constitute a violation of the federal Controlled Substances Act if the officer has reason to believe that such activity is in compliance with Pennsylvania medical cannabis laws, nor shall any such officer expend any Commonwealth or local resources, including the officer's time, to provide any information or logistical support related to such activity to any federal law enforcement authority or prosecuting entity.

(xx) It is the public policy of the Commonwealth of Pennsylvania that contracts related to medical cannabis that are entered into by cardholders, medical cannabis establishments, or medical cannabis establishment agents, and those who allow property to be used by those persons should be enforceable. It is the public policy of the Commonwealth of Pennsylvania that no contract entered into by a cardholder, a medical cannabis establishment, or medical cannabis establishment agent, or by a person who allows property to be used for activities that are exempt from Pennsylvania criminal penalties by this chapter, shall be unenforceable on the basis that activities related to cannabis are prohibited by federal law.

Anti-discrimination

(xx) No school or landlord may refuse to enroll or lease to and may not otherwise penalize a person solely for the person's status as a cardholder, unless failing to do so would violate federal law or regulations or cause the school or landlord to lose a monetary or licensing-related benefit under federal law or regulations.

(xx) For the purposes of medical care, including organ and tissue transplants, a registered qualifying patient's use of cannabis according to this chapter is considered the equivalent of the authorized use of any other medication used at the discretion of a practitioner and does not constitute the use of an illicit substance or otherwise disqualify a qualifying patient from needed medical care.

(xx) A person shall not be denied custody of or visitation rights or parenting time with a minor solely for the person's status as a cardholder, and there shall be no presumption of neglect or child endangerment for conduct allowed under this chapter, unless the person's behavior is such that it creates an unreasonable danger to the safety of the minor as established by clear and convincing evidence.

(xx) Except as provided in this chapter, a registered qualifying patient who uses cannabis for medical purposes shall be afforded all the same rights under state and local law, including those guaranteed under _____ [the state's disability rights law], as the individual would be afforded if he or she were solely prescribed pharmaceutical medications, as it pertains to:

- (1) any interaction with a person's employer;
- (2) drug testing by a person's employer; or
- (3) drug testing required by any state or local law, agency, or government official.

(xx) The rights provided by this section do not apply to the extent that they conflict with an employer's obligations under federal law or regulations or to the extent that they would disqualify an employer from a monetary or licensing-related benefit under federal law or regulations.

(xx) No employer is required to allow the ingestion of cannabis in any workplace or to allow any employee to work while under the influence of cannabis. A registered qualifying patient shall not be considered to be under the influence of cannabis solely because of the presence of metabolites or components of cannabis that appear in insufficient concentration to cause impairment.

(xx) No school, landlord, or employer may be penalized or denied any benefit under state law for enrolling, leasing to, or employing a cardholder.