



CHARLES D. BAKER
Governor

KARYN E. POLITO
Lieutenant Governor

The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
Bureau of Health Care Safety and Quality
Medical Use of Marijuana Program
99 Chauncy Street, 11th Floor, Boston, MA 02111

MARYLOU SUDDERS
Secretary

MONICA BHAREL, MD, MPH
Commissioner

Tel: 617-660-5370
www.mass.gov/medicalmarijuana

**Guidance for Physicians Regarding the Medical Use of
Marijuana**
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Chapter 369 of the Acts of 2012, *An Act for the Humanitarian Medical Use of Marijuana* (“the Act”), allows a qualifying patient who suffers from a debilitating medical condition to possess a 60-day supply of marijuana if the patient has a written certification from a Massachusetts licensed physician and is registered with the Massachusetts Department of Public Health (“DPH”). DPH issued regulations implementing the Act, 105 CMR 725.000 (“Regulations”), on May 24, 2013.

DPH offers the following guidance for licensed physicians in Massachusetts who may have patients who would benefit from the medical use of marijuana.

DPH strongly encourages physicians to consult with their own legal counsel and/or legal counsel for any health care facility with which the physician is affiliated regarding compliance with all applicable laws and regulations.

Who is eligible to become a certifying physician?

A certifying physician must be a Massachusetts-licensed physician (Medical Doctor or Doctor of Osteopathy), who holds an active full license with no prescribing restrictions, a Massachusetts Controlled Substances Registration (MCSR), and has at least one established place of practice in Massachusetts.

Are physicians required to take Continuing Medical Education before issuing written certifications for the medical use of marijuana?

Yes, as of July 1, 2014, physicians must have completed a minimum of 2.0 Category 1 continuing professional development credits prior to issuing certifications for the medical use of marijuana. The continuing education program must explain the proper use of marijuana, including side effects, dosage, and contraindications, including with psychotropic drugs, as well as on substance abuse recognition, diagnosis, and treatment related to marijuana. DPH will conduct random audits for compliance.

How can I register as a certifying physician?

In order to issue a certification to a qualifying patient, a physician must register with the Medical Use of Marijuana Program via the Medical Use of Marijuana Online System (“MMJ Online System”). To learn how to register, please read the document titled “Physician Step-by-Step Registration Information” located at the following link:

<http://www.mass.gov/eohhs/gov/departments/dph/programs/hcg/medical-marijuana/info-for-physicians.html>

How long will a physician’s registration be valid?

Once registered in the MMJ Online System, the physician remains registered and retains the ability to certify a patient indefinitely, unless the:

- physician’s license to practice medicine in Massachusetts is suspended, revoked, or restricted with regard to prescribing;
- physician has voluntarily agreed not to practice medicine in Massachusetts;
- physician’s MCSR is revoked or suspended;
- physician has fraudulently issued a written certification;
- physician surrenders his/her registration; or
- physician has certified a qualifying patient without completing the required continuing medical education, as described in the regulations.

Who is eligible to become a qualifying patient?

Massachusetts residents at least 18 years of age:

A Massachusetts resident 18 years of age or older who has been diagnosed by a certifying physician as having a debilitating medical condition may become a qualifying patient.

Massachusetts residents under the age of 18 will only qualify under limited circumstances and with an elevated standard.

Two Massachusetts licensed certifying physicians (at least one of whom is a board-certified pediatrician or board-certified pediatric subspecialist) must diagnose the qualifying patient as having a debilitating life-limiting illness (one that does not respond to curative treatments, where reasonable estimates of prognosis suggests death may occur within two years).

If the debilitating medical condition is not life-limiting, both physicians must determine that the benefits of the medical use of marijuana outweigh the risks. There must be a discussion of the potential negative impacts on neurological development with the parent or legal guardian of the qualifying patient, written consent of the parent or legal guardian, and documentation of the rationale in the medical record and the certification.

What is a “debilitating medical condition”?

As described in the Act, a debilitating medical condition includes “cancer, glaucoma, positive status for human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), hepatitis C, amyotrophic lateral sclerosis (ALS), Crohn’s disease, Parkinson’s disease, and

multiple sclerosis (when such diseases are debilitating), and other debilitating conditions as determined in writing by a qualifying patient's certifying physician."

"Debilitating" is defined in the Regulations as "causing weakness, cachexia, wasting syndrome, intractable pain, or nausea, or impairing strength or ability, and progressing to such an extent that one or more of a patient's major life activities is substantially limited."

If a patient has had a diagnosis of a debilitating medical condition in the past, but does not have an active condition (unless the symptoms related to such condition are mitigated by the medical use of marijuana), and is not undergoing treatment for such a condition, the patient is not to be considered to be suffering from a debilitating medical condition.

What is a certification?

A certification is an electronic document completed and signed by the certifying physician in the MMJ Online System, which states that in the physician's professional opinion, the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient.

The certification must specify the qualifying patient's debilitating medical condition and must indicate the time period for which the certification is valid (not less than 15 calendar days, and not longer than one year).

How can I issue a certification for a qualifying patient?

In order to issue a certification to a qualifying patient, a physician must register with the Medical Use of Marijuana Program via the MMJ Online System. To learn how to register with the Program, please read the document titled "Physician Step-by-Step Registration Information" located at the following link:

<http://www.mass.gov/eohhs/gov/departments/dph/programs/hcq/medical-marijuana/info-for-physicians.html>

Can I certify anyone who walks into my office?

A certification can only be made in the course of a bona fide physician-patient relationship.

A bona fide physician-patient relationship is defined in the Regulations as a relationship between a certifying physician (acting in the usual course of professional practice) and a patient, in which the physician has conducted a clinical visit, completed and documented a full assessment of the patient's medical history and current medical condition, has explained the potential risks and benefits of the marijuana use, and has a role in the patient's ongoing care and treatment.

A certifying physician cannot delegate to any other healthcare professional or other person the authority to diagnose the qualifying patient as having a debilitating medical condition.

A physician may not issue a written certification for himself/herself or for his/her immediate family members, but may issue a written certification for his/her employees or coworkers.

Can a physician register a patient with the Medical Use of Marijuana Program?

The Program understands that some patients may need assistance with the registration process. However, patients are responsible for registering themselves with the Program and are accountable for the accuracy of the information entered on their registration application as well as the photos and documents uploaded to their registration application.

In cases when the physician does provide assistance with the registration process, the patient must retain full control over their registration information and their ability to access the MMJ Online System in order to make changes to their registration information, renew their registration annually, and receive important updates from the Program. For this reason, a physician may never provide the physician's email address or the physician's office email address as the email address for the patient when certifying the patient for marijuana for medical use. The patient must provide an email address that they, the patient, has control over. Nor should the patient provide the physician their login information for the MMJ Online System.

Patients may call the Medical Use of Marijuana Program at 617-660-5370 if they have questions about the registration process.

Can a physician serve as a qualifying patient's personal caregiver?

A physician may not serve as a qualifying patient's personal caregiver if he or she has issued a written certification to that patient for marijuana for medical use.

Are there restrictions on a physician's involvement with a Registered Marijuana Dispensary (RMD)?

Yes. The restrictions apply to the certifying physician, his/her co-workers, employees, and immediate family members. These individuals may not:

- Directly or indirectly accept from, ask for or offer anything of value to a personal caregiver, RMD, or anyone associated with the RMD in any manner.
- Offer a discount or anything of value to a qualifying patient based on the patient's agreement or decision to use a particular personal caregiver or RMD;
- Examine or counsel a patient at a RMD;
- Issue a certification at a RMD; or
- Have a direct or indirect financial interest in a RMD.

Can I be punished pursuant to state or federal law for my involvement with recommending/certifying medical use of marijuana to a qualifying patient?

The Act states that a physician and other health care professionals under the physician's supervision shall not be penalized or prosecuted under Massachusetts law for advising a qualifying patient about the risks and benefits of medical use of marijuana or by providing a qualifying patient with a certification based on a full assessment of the qualifying patient's medical history and condition.

Any decision as to whether to recommend or certify medical use of marijuana should be made in consultation with the physician's own legal counsel and/or legal counsel for any health care facility with which the physician is affiliated.