

Becoming a Patient in Maine

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I. Introduction

The State of Maine enacted the Maine Medical Marijuana Act of 1998 (the Act) to protect patients who find therapeutic and palliative benefits from using marijuana to be protected from civil or criminal penalties when their doctors advise that such use may provide a medical benefit to them and when other reasonable restrictions are met regarding that use. The Act is intended to permit patients who may benefit from the medical use of marijuana to be able to discuss freely with, and seek advice from their physician on the possible risks and benefits of medical marijuana use.

Additionally, persons who have been legally designated as caregivers to medical marijuana patients will not be in violation of civil or criminal laws when they assist these patients in using permissible amounts of marijuana. As there is currently no legally available supply of marijuana for medical patients, these patients or their caregivers are allowed to grow a small amount of marijuana to meet the patient's medical requirements.

II. Becoming A Patient

A. How to become a medical marijuana patient in the state of Maine

Under the Act, a person who is at least 18 years of age may lawfully possess a usable amount of marijuana for medical use if, at the time of that possession, the person has available an authenticated copy of a medical record or other written documentation from a physician, demonstrating that:

- a. The person has been diagnosed by a physician as suffering from one or more of the conditions enumerated below;
- b. A physician, in the context of a bona fide physician-patient relationship with the person:
 - i. Has discussed with the person the possible health risks and therapeutic or palliative benefits of the medical use of marijuana based on information known to the physician, including, but not limited to, clinical studies or anecdotal evidence reported in medical literature or observations or information concerning the use of marijuana by other patients with the same or similar conditions;
 - ii. Has provided the person with the physician's professional opinion concerning the possible balance of risks and benefits of the medical use of marijuana in the person's particular case; and
 - iii. Has advised the person, on the basis of the physician's knowledge of the person's medical history and condition, that the person might benefit from the medical use of marijuana;
- c. The person has disclosed to the physician that person's medical use of marijuana; and
- d. The person is under the continuing care of the physician.

B. Registration Fee

Since Maine does not provide for a process to register medical marijuana patients with the state, there is no registration fee.

C. Eligible medical conditions: "Chronic or Debilitating Medical Condition"

Under Maine's medical marijuana law, a person may be recommended marijuana for the following conditions:

- a. Persistent nausea, vomiting, wasting syndrome or loss of appetite as a result of:
 - i. Acquired immune deficiency syndrome (AIDS) or the treatment thereof; or
 - ii. Chemotherapy or radiation therapy used to treat cancer;
- b. Heightened intraocular pressure as a result of glaucoma;
- c. Seizures associated with a chronic, debilitating disease, such as epilepsy; or
- d. Persistent muscle spasms associated with a chronic, debilitating disease, such as multiple sclerosis

D. Written Certification Must be Provided to Prove Eligibility

Under the Act, medical marijuana patients are protected if that patient possesses an authenticated copy of a medical record or other written documentation from a physician, demonstrating that:

- a. The person has been diagnosed by a physician as having one or more of the conditions enumerated above;
- b. A physician, in the context of a bona fide physician-patient relationship with the person:
 - i. Has discussed with the person the possible health risks and therapeutic or palliative benefits of the medical use of marijuana based on information known to the physician, including, but not limited to, clinical studies or anecdotal evidence reported in medical literature or observations or information concerning the use of marijuana by other patients with the same or similar conditions;
 - ii. Has provided the person with the physician's professional opinion concerning the possible balance of risks and benefits of the medical use of marijuana in the person's particular case; and
 - iii. Has advised the person, on the basis of the physician's knowledge of the person's medical history and condition, that the person might benefit from the medical use of marijuana;
- c. The person has disclosed to the physician that person's medical use of marijuana; and
- d. The person is under the continuing care of the physician.

E. Finding a Doctor

Under Sec. 8. 22 MRSA §2383-B, sub-§3 of Maine's medical marijuana law, a "physician" is defined as a person licensed in the state of Maine as an osteopathic physician by the board of Osteopathic Licensure or a person licensed as a physician or surgeon by the Board of Licensure in Medicine.

Maine's medical marijuana law has no provisions to assist people in finding a doctor who will recommend the medical use of marijuana. Maine's law requires that a physician who advises a patient that the patient might benefit from the medical use of marijuana, must do so in the context of a bona fide physician-patient relationship in order to be protected from arrest, prosecution, being penalized in any manner, or denied any right or privilege. Physicians are also protected under federal law as federal courts have recognized that physician's possess a First Amendment right to recommend marijuana for medical purposes (*Conant v. Walters* (2002)).

The fact that a person produces written documentation to prove status as a medical marijuana patient does not constitute a waiver of the physician-patient privilege in any other respect.

F. Renewal Applications

There is no application or renewal process under Maine's medical marijuana law.

G. Age Limitations

A person under 18 years of age may lawfully possess a usable amount of marijuana for medical use if the person:

- a. Meets the requirements for all medical marijuana patients shown above; and
- b. Has available a signed written authorization from that person's parent or legal guardian consenting to that person's medical use of marijuana; or
- c. Is a minor who is entitled to give consent to all medical and other health care services pursuant to Title 22, section 1503.

Additionally, medical marijuana patients under the age of 18 may not receive a suspension of their license, or be denied a permit, or right to operate, or right to apply for and obtain a motor vehicle license.

H. Personal Records

Americans for Safe Access strongly urges patients to keep copies of all paperwork they have related to their status as a medical marijuana patient as proof of legal status. This is meant to protect patients from possible future encounters with law enforcement agents.

III. Limitations and Protections under the Initiative

A. Possession and Growing Limitations

Maine's Medical Marijuana Law was amended to allow for the term "usable amount of marijuana for medical use" to mean:

- a. **2-1/2 ounces or less of harvested marijuana and;**
- b. **A total of 6 plants, of which no more than 3 may be mature, flowering plants.**

B. Consumption of Medical Marijuana

Under Maine's Medical Marijuana Act, the medical use of marijuana by an eligible patient is not authorized in a public place or in a workplace where such use is not permitted.

C. Paraphernalia associated with medical use

Title 22, section 2383-B, subsection 5 of the Act permits any paraphernalia associated with the medical use of marijuana including any paraphernalia involved in the use, possession with intent to use, planting, propagation, cultivation, growing, harvesting, manufacture, compounding, conversion, production, processing, preparation, testing, analyzing, packing, storing, containment, concealment, ingesting, inhaling or otherwise introduce marijuana into the human body for medical use.

D. Access to Medical Marijuana

Medical marijuana patients cannot go to a pharmacy for medical marijuana. Pharmacies can only dispense medications that are "prescribed." Unfortunately, medical marijuana is classified by the federal government as a Schedule I drug which means that it cannot be "prescribed" by any health care professional.

Under Maine's medical marijuana law, doctors may only "recommend" marijuana, and that allows patients to grow their own medical marijuana for their private use. The state of Maine does not provide information on the acquisition of marijuana. Therefore, the State of Maine will not assist in getting seeds or plants to start growing medical marijuana.

E. Growing/Dispensing Collectives and Cooperatives

The Act does not clearly state where medical marijuana plants may be grown, how many patients one caregiver may care for, or if two or more patients and/or caregivers may share one growing space. Also, the Act does not discuss whether local and state law enforcement officers must keep plants alive that are confiscated until a resolution is reached (i.e. a decision not to prosecute, the dismissal of charges, or an acquittal).

Additionally, the issue of selling or distributing medical marijuana is not addressed. This creates confusion regarding Maine's approach to dispensing collectives and cooperatives and may leave the door open for their possible establishment. It is up to the medical marijuana patients in Maine to decide whether or not to pursue this method of obtaining medicine.

Americans for Safe access strongly recommends that any patients who are interested in forming a dispensing collective or cooperative consult an attorney before doing so.

F. Caregivers

The terms "caregiver" describes a person who is legally designated to care for an eligible medical patient to assist that patient in using marijuana for medical purposes. Under Sec. 7. 22 MRSA §2383-B, sub-§3, a "designated caregiver" means a person over 18 years of age who:

- a. Is a family member or other person who has consistently assumed responsibility for the person's housing, health or safety, and
- b. Is named in a written individual instruction or power of attorney for health care as defined in Title 18-A, section 5-801 by, or is the parent or legal guardian of, a person authorized to possess marijuana for medical use.

Additionally, a designated caregiver may lawfully possess a usable amount of marijuana for medical use by an eligible patient if the designated caregiver is acting within the scope of the designated care giver's duties to the eligible patient.

G. Housing

The Act does not address whether a qualified patient can be evicted from their housing because of their status as a medical marijuana patient, even if that patient has the amount of medical marijuana allowed by law. Therefore, it is up to each patient to decide whether or not to tell his/her landlord about their status as a medical marijuana patient.

Additionally, nothing in Maine's medical marijuana law specifically addresses whether or not a person can be a registered patient and live in subsidized housing. However, under federal law, HUD has clear regulations prohibiting **ANY** marijuana use in federally subsidized housing (the federal government does not recognize marijuana as being medicine). If a patient has questions about these important issues, Americans for Safe Access recommends speaking to an attorney to learn about their rights and protections.

Maine's medical marijuana law also does not address the issue of whether or not patients who live within 1000 feet of a school, AKA a "drug free zone" can still grow and/or possess medical marijuana.

Patients are protected from asset forfeiture (i.e. your house). Under section 5821-A of Maine's medical marijuana law, property is not subject to forfeiture if the activity that subjects the person's property to forfeiture is possession of marijuana and the person meets the requirements for medical use of marijuana under Title 22, section 2383-B, subsection 5.

H. Employment

The Maine medical marijuana law:

- a. Does not require any employer to accommodate the medical use of marijuana in any work place where such use is not permitted. It is not specified whether or not this regulation concerning accommodation pertains only to on-the-job medical marijuana use, or more generally, to the employment of any individual who engages at any time in the medical use of marijuana;
- b. Does not, at any time, discuss the issue of employment-related drug testing

I. Reciprocity

Maine Residents: Maine currently has no reciprocity agreements with other states to honor Maine's medical marijuana law. This includes even those states that currently have medical marijuana laws of their own.

However, in Montana, medical marijuana patients from other states who are valid medical marijuana patients under that state's law are protected under Section 4(8) of the Montana Medical Marijuana Act [Sec. 50-46-201(8), MCA]. A registry identification card or its equivalent issued by another state government to permit the medical use of marijuana by a qualifying patient or to permit a person to assist with a qualifying patient's medical use of marijuana has the same force and effect as a registry identification card issued by the Department of Public Health and Human Services in Montana. Therefore, medical marijuana patients from Maine should be protected in Montana under Montana

state law. See the [Montana Patients Guide](#) for details on the protections and limitations that Montana state law affords medical marijuana patients.

Additionally, in Rhode Island, [The Edward O. Hawkins and Thomas C. Slater Medical Marijuana Act](#) (MMA) protects patients and primary caregivers from outside Rhode Island who have a state issued medical marijuana ID card, or its equivalent. The MMA states, “A registry identification card, or its equivalent, issued under the laws of another state, U.S. territory, or the District of Columbia to permit the medical use of marijuana by a qualifying patient, or to permit a person to assist with a qualifying patient's medical use of marijuana, shall have the same force and effect as a registry identification card issued by the department.” Therefore, medical marijuana patients from the other medical marijuana states that have state issued cards should be protected in the state of Rhode Island. See the [Rhode Island Patients Guide](#) for more information.

In states with no medical marijuana program, marijuana use, regardless of a doctor's recommendation, is illegal. You may be arrested and charged with civil or criminal offenses in those states.

J. Law Enforcement

The Maine Medical Marijuana Act specifies that qualified patients are permitted to use, or to possess with intent to use, plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, ingest, inhale or otherwise introduce marijuana into the human body for medical use.

Patients are protected from asset forfeiture. Under section 5821-A of Maine's medical marijuana law, property is not subject to forfeiture if the activity that subjects the person's property to forfeiture is possession of marijuana and the person meets the requirements for medical use of marijuana under Title 22, section 2383-B, subsection 5.

K. Confidentiality

Maine's medical marijuana law does not provide for a system to track medical marijuana patients. The law does not state any method where information is either gathered or retained concerning patients and physicians associated with medical marijuana. Instead, medical marijuana in Maine is treated like any other medical decision and dealt with in separate provisions in the code. Additionally, medical confidentiality is federally regulated under HIPAA, the Health Insurance Portability and Accountability Act.

L. Insurance

Maine's Medical Marijuana Act does not require an insurer, organization for managed care, or any person or entity who provides coverage for a medical or health care service to pay for or reimburse a person for costs associated with the medical use of marijuana.