## How much medical marijuana can qualifying patients and designated providers possess?

Qualifying patients and designated providers are permitted to possess "no more marijuana than is necessary for the patient's personal, medical use, not exceeding the amount necessary for a 60-day supply." RCW 69.51A.040(3)(b). The state Department of Health has defined a 60-day supply as "a total of no more than twenty-four ounces of usable marijuana, and no more than fifteen plants." WAC 246-75-010(3)(a). Usable marijuana is defined as "the dried leaves and flowers of the Cannabis plant Moraceae" and does not include "stems, stalks, seeds and roots." WAC 246-75-010(2)(d). A plant is defined as "any marijuana plant in any stage of growth." WAC 246-75-010 (2)(b). Patients maintain the right to present evidence in court that their necessary medical use exceeds the presumptive amount. WAC 246-75-010(3)(c).

## How does the medical marijuana law protect health care professionals?

Washington law states that health care professionals permitted to authorize the medical use of marijuana "shall not be penalized in any manner, or denied any right or privilege" for:

(1) Advising patients about the risks and benefits of medical marijuana; or

(2) Providing a qualifying patient with valid documentation that the medical use of marijuana may benefit that particular patient.

Health care professionals and their prescription licenses are also protected under federal law. In *Conant v. Walters*[1], the Ninth Circuit Court of Appeals ruled that threats from the federal government to revoke physicians' DEA registrations or initiate investigations based solely on physicians' recommendations of medical marijuana to their patients violated the core First Amendment values of the doctor-patient relationship. But health care professionals still cannot formally prescribe or provide marijuana to their patients – only patients and their providers may possess marijuana for the patient's medical use.

**1.** 309 F.3d 629 (9th Cir. 2002), *cert. denied*, 540 U.S. 946, 124 S. Ct. 387, 157 L. Ed. 2d 276 (2003).

## Does the medical marijuana law offer any protection to other people in the qualifying patient's life?

No one can be punished "**solely** for being in the presence or vicinity of medical marijuana or its use." RCW 69.51A.050(2). As long as they are not in actual possession of the patient's medical marijuana ("constructive possession," like being in the same room, does not count) or actively participating in the growing, obtaining, delivering, or administering of the patient's medical marijuana, family members, friends, roommates, medical services providers, social workers, and anyone else may be around medical marijuana users and their designated providers without fear of prosecution.

The medical marijuana law only allows qualifying patients and their designated providers to possess medical marijuana – and only qualifying patients to use the marijuana. The law does not allow anyone else to possess, acquire, deliver, grow, harvest, or use marijuana for any purpose.

## What are the limits of the medical marijuana law?

The Medical Use of Marijuana Act protects **only** the individuals described in the statute (see above). Except for the assistance given by a designated provider to a qualifying patient, growing marijuana or giving marijuana to anyone is still a crime under Washington state law. Even qualifying patients can be prosecuted for giving their medical marijuana to someone for whom they are not also the designated provider.

**The act describes two new state criminal offenses:**

- It is a misdemeanor to use or display medical marijuana "in a manner or place which is open to the view of the general public."
- It is a class C felony to fraudulently produce any record purporting to be, or tamper with the content of any record for the purpose of having it accepted as, valid documentation.

**And the act sets certain other limitations:**

- No health insurer can be required to pay for the medical use of marijuana.
- Health care professionals are not required to authorize the medical use of marijuana for a patient.
- Places of employment, school buses, school grounds, youth centers, and correctional facilities are not required to accommodate the **on-site** use of medical marijuana.
- Patients are not allowed to **smoke** medical marijuana in any public place in which smoking of **any** kind is prohibited under the Washington Clean Indoor Air Act, Chapter 70.160 of the Revised Code of Washington.
- The law does not protect medical use of marijuana "in a way that endangers the health or well-being of any person through the use of a motorized vehicle on a street, road, or highway." In other words, qualifying patients cannot drive under the influence of medical marijuana.

Prepared by the ACLU of Washington Foundation's Drug Policy Project
*Current as of June 2010*

# Washington's Medical Use of Marijuana Act

A Guide for Patients, Providers, Health Care Professionals, Law Enforcement, and the Public

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Washington voters passed the Medical Use of Marijuana Act in 1998 as a ballot initiative (I-692), and the Washington State Legislature amended the Act in 2007 with Senate Bill 6032 and in 2010 with Senate Bill 5798. In 2008, the Washington Department of Health clarified the law by adopting a rule defining a "60-day supply" of medical marijuana. Patients with terminal or debilitating medical conditions, and their friends, families, providers and health care professionals, should take time to understand this law, which is codified in Chapter 69.51A of the Revised Code of Washington and at Chapter 246-75 of the Washington Administrative Code. The information here provides a general explanation of the Medical Use of Marijuana Act. For legal advice on how the act applies or does not apply to you personally, you should speak with an attorney who is familiar with this law.

## What does the Medical Use of Marijuana Act do?

Washington's medical marijuana law provides qualifying patients and their designated providers **a defense in state and local courts to criminal charges relating to growing, possessing, or administering medical marijuana**. The law also clarifies that health care professionals may discuss medical marijuana as a treatment option with their patients and authorize its use without penalty.

Washington's law does not, however, change federal marijuana laws, and even medical use of marijuana remains prohibited under federal law. Therefore, anyone who manufactures, distributes, dispenses, or possesses marijuana for **any** purpose still may be prosecuted under federal law. *See* Title 21, Chapter 13, sections 841 and 844 of the United States Code. However, on October 19, 2009, the U.S. Department of Justice sent a written policy memorandum to the U.S. Attorneys serving in states with medical marijuana laws, directing that federal resources should not be spent investigating or prosecuting individuals in "clear and unambiguous compliance" with state medical marijuana laws.

Washington's Medical Use of Marijuana Act does not legalize marijuana for recreational or any other use that is not specifically covered by the law. The law applies to **only** the medical conditions listed in the statute (see below) and others that may be approved by the Washington State Medical Quality Assurance Commission and Board of Osteopathic Medicine and Surgery. All other uses of marijuana remain illegal.

## Who is a protected "qualifying patient"?

Washington's law protects patients suffering from specified **terminal or debilitating medical conditions** who have been diagnosed by, and received a qualifying statement from, a health care professional licensed under RCW 18.71 (M.D.), RCW 18.71A (physician assistant), RCW 18.57 (osteopathic physician), RCW 18.57A (osteopathic physician's assistant), RCW 18.36A (naturopath), or RCW 18.79 (advanced registered nurse practitioner).

If the health care professional's qualifying statement is issued on or after June 10, 2010, it must be signed, dated, and written on "tamper-resistant paper" that includes one or more industry-recognized features designed to prevent copying, counterfeiting, or erasure or modification of information. RCW 69.51A.010(5).

The patient must be a resident of Washington at the time he or she is diagnosed with a covered condition and be advised by the diagnosing health care professional (1) about the risks and benefits of medical marijuana and (2) that he or she "may benefit from the medical use of marijuana." Standard forms that can be used by health care professionals, if printed on tamper resistant paper, are available at the following Web page:

**www.aclu-wa.org/news/guide-washingtons-medical-marijuana-law**

The medical marijuana law does not cover all terminal or debilitating medical conditions – only those conditions and categories of conditions currently listed in the statute or subsequently approved by the Medical Quality Assurance Commission (MQAC) and Board of Osteopathic Medicine and Surgery. Currently, the following conditions are listed in and covered by the Medical Use of Marijuana Act:

(a) Cancer, human immunodeficiency virus (HIV), multiple sclerosis, epilepsy or other seizure disorder, or spasticity disorders;

(b) Intractable pain, limited for the purpose of this chapter to mean pain unrelieved by standard medical treatments and medications;

(c) Glaucoma, either acute or chronic, limited for the purpose of this chapter to mean increased intraocular pressure unrelieved by standard treatments and medications;

(d) Crohn's disease with debilitating symptoms unrelieved by standard treatments or medications;

(e) Hepatitis C with debilitating nausea or intractable pain unrelieved by standard treatments or medications; and

(f) Diseases, including anorexia, which result in nausea, vomiting, wasting, appetite loss, cramping, seizures, muscle spasms, or spasticity, when these symptoms are unrelieved by standard treatments or medications.

Anyone may petition the Medical Quality Assurance Commission and the Board of Osteopathic Medicine and Surgery to add other terminal or debilitating conditions to the list.

**Qualifying patients must carry their "valid documentation" with them whenever they possess or use medical marijuana.** Valid documentation consists of two items: (1) their health care professional's authorization, which must be **dated** if signed on or after June 10, 2010 **and** (2) proof of their identity, such as a Washington state driver's license or identicard. A qualifying patient must present **both** of these items to any law enforcement officer who questions the patient regarding his or her use of medical marijuana.

## Who is a protected "designated provider"?

Some qualifying patients need help growing, obtaining, storing, or using medical marijuana, so the law allows them to appoint a "designated provider" who will also be protected under the Medical Use of Marijuana Act. A designated provider is defined as a person who:

(a) Is eighteen years of age or older;

(b) Has been designated in writing by a patient to serve as a designated provider under this chapter;

(c) Is prohibited from consuming marijuana obtained for the personal, medical use of the patient for whom the individual is acting as a designated provider (this does not prohibit a patient from being a designated provider for another patient and consuming his or her own personal supply of medical marijuana); and

(d) Is the designated provider to only one patient at any one time.

The qualifying patient must designate the provider in writing before the provider assumes responsibility for the patient's medical marijuana, and **the designated provider must carry (1) the patient's written designation, (2) if issued on or after June 10, 2010, a duplicate original of the patient's health care professional's authorization printed on tamper-resistant paper, and (3) proof of identity whenever he or she is growing, obtaining, or in possession of medical marijuana.** All of these items must be presented to law enforcement upon request.