

2011 DRAFT MEDICAL CANNABIS LEGISLATION

Draft 9 comments and criticism

By the Cannabis Defense Coalition, January 2011

Section 102, Page 2, Line 23. The definition of “intractable pain” for the purposes of our medical cannabis law means “pain unrelieved by standard treatments or medications.” The Department of Health has a distinct definition of intractable pain, and a distinct definition of chronic pain. We believe both are covered by the existing intractable pain clause of the medical cannabis law. Removing the explicit definition in the law will cause intractable pain to be redefined to exclude chronic pain as defined by the DOH. In a seeming catch 22, if one’s intractable pain is relieved at all by medical cannabis, it likely ceases to be “intractable” under DOH rules, and is instead only “chronic pain” by rule. We recommend using the phrase “intractable or chronic pain” or keeping the explicit definition for this one qualifying condition. The former solution is preferred.

Section 201, Page 6, Line 13. In the definition of “public place,” the phrase “premises where goods and services are offered to the public for retail sale” seems like it may include licensed dispensers. This would make it illegal to view medical cannabis before purchase.

Section 201, Page 6, Line 36. Many patients are provided with a wallet-sized card version of their authorization, which is very practical for many patients and authorizing health care professionals. Under current law, it seems that these cards must be printed on paper or paper composites, and that they can not be printed on plastic composites. Card printers using plastic composite cards are much more readily available and cost effective than specialized paper composites. In the definition of “tamper-resistant paper,” we recommend replacing the three mentions of “paper” with “paper or plastic composite.”

Section 201, Page 7, Line 8. We would like to see “intractable pain” replaced with “intractable or chronic pain” or to see the phrase “limited for the purposes of this chapter to mean pain unrelieved by standard treatments or medications.” The former is preferred.

Section 201, Page 7, Line 21. Earlier this year, MQAC added “chronic renal failure requiring hemodialysis” to the list of qualifying conditions. We recommend adding “chronic renal failure” or “chronic renal failure requiring dialysis” to the definition of “terminal or debilitating medical condition.” Specifically, the definition should not single out hemodialysis over other types of dialysis.

Section 201, Page 7, Line 29. The .3% THC measurement it meant to apply to cannabis products, not useable cannabis. We would love to keep this line, but foresee the police and prosecutors having serious issues with it.

Section 201, Page 7, Line 36. It seems to be our intent to treat medical cannabis *like* a prescription. It is our understanding that prescriptions are valid for no longer than a year. A maximum year-long authorization seems acceptable in that sense. Many patients have medical cannabis authorizations with no expiration date specified. This change will cause thousands of patients who were in compliance with the law the day before the law went into effect to suddenly be outside the definition of “valid documentation” and thus outside the protections afforded by the law. Many health care professionals authorize the use of medical cannabis for less than a year, and it should remain their right to do so.

Section 401, Page 10, Line 10. Allowing a patient no more cannabis product than could “reasonably” be produced from 24 ounces raises concern about how such measurements will be carried out. One ounce of cannabis could be turned into one product weighing very little, like a tincture. It could also be turned into thousands of products weighing a great amount.

Section 401, Page 10, Line 26. Change “patient” to “qualifying patient” and “provider” to “designated provider to keep consistent language.

Section 401, Page 10, Line 26. Requiring the authorization be posted “next to” any plants seems ambiguous. The prepositional phrase “in the same room as” would be better.

Section 401, Page 10, Line 27. Requiring the authorization be posted next to any useable cannabis or cannabis products in one’s home seems onerous. A patient should be allowed to store and use medical cannabis throughout their home without posting medical records prominently everywhere. Some people require or prefer discretion.

Section 402, Page 11, Line 9. We are curious how the number “96 ounces” was arrived at.

Section 402, Page 11, Line 16. Add “or their designated providers” at the end of the sentence. This will allow designated providers to pick up medicine from a collective garden on behalf of the participating patient. In many cases, the designated provider is, literally, a primary caregiver to the patient. Bedridden or disabled patients should be able to access medicine from a collective garden with the assistance of their designated provider.

Section 406, Page 13, Line 13. Earlier in the section, the phrase “state or territory” is used, but here it is just “state.” Change to “state or territory” to keep consistent language.

Section 501, Page 16, Line 11. Under current law, patients may not use medical cannabis “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.” This change seems to make it illegal to drive with exogenic cannabinoids in one’s body. Cannabinoid metabolites are stored in fatty tissue for upwards of two months. A positive blood test result for cannabis does not indicate impairment, nor recent use of cannabis. The drunk driving statute makes no exception for driving while “under the influence of” or “affected by” exogenic cannabinoids. Many, if not most, medical cannabis stakeholders believe cannabis is a preventative medicine, providing neuroprotective, anti-cancer, anti-inflammatory and other beneficial services to the body and mind. As a preventative medicine, one is always “affected by” cannabinoids in one’s system, though one is rarely impaired because of them. Case law may define the phrase “affected by” more beneficially to a prosecuted patient, but on first glance this seems to make driving illegal for medical cannabis patients in Washington State.

Section 704, Page 23, Line 35. Change “provider” to “dispenser.”

Section 901, Page 25, Line 23. This section indicates that health care professionals will be responsible for registering patients and designated providers in a future, optional state registry. This will be an additional burden on health care professionals, which may be onerous to some who would otherwise be willing to recommend the medical use of cannabis to their patient. That said, we appreciate the anonymity benefits of having a third-party, non-state registrar.

Section 901, Page 26, Line 2. Registrations in an optional state registry should last until the date the recommendation expires, not simply one year.

Section 901, Page 26, Line 10. Could the phrase “on an income-based scale” be construed to require income information from any registry applicant, not simply those requesting reduced fees? If third party health care professionals are entering the registrations, how will such a sliding scale work?

Section 901, Page 26, Line 34. We would like to see it specifically written that the registry query logs include the inquiring peace officer’s name.

Section 904, Page 30, Line 10. Change “provider” to “dispenser.”

Section 904, Page 30, Line 33. Change “department” to “departments.”

Section 904, Page 31, Line 3. What constitutes a “reasonable effort” to contact the occupant of a home before a police officer starts seizing cannabis from a registered patient outside of DOH business hours?

Section 905, Page 31, Line 6. This seems to make it illegal for any person to disclose any personally identifiable information about a patient, provider, producer, processor or dispenser. It seems like this section is intended to apply to the registry data and application form data, not to all personal information shared by any person.

Section 906, Page 32, Line 7. Department rules should not be exempt from public disclosure.

Section 1101, Page 33, Line 15. Replace “dispensation” with “dispensing” to keep consistent language.