

Emerging Issue: Medical Marijuana
Proposed Changes to Definitions in the Medical Marijuana Act
Prepared for the Children, Families, Health, and Human Services Interim Committee
June 2010

Background

The work group reviewing Montana's Medical Marijuana Act recommended that the Children, Families, Health, and Human Services Interim Committee review the entire definitions section of the Act. Work group members considered — but did not specifically act on — several ideas for changing or adding to the definitions.

This briefing paper discusses the issues raised by the work group and others in relation to existing and suggested definitions.

Existing Definitions

Caregiver: A caregiver is a person who undertakes responsibility for "managing the well-being of a person with respect to the medical use of marijuana."

Issues: The term appears to place a health care responsibility on the caregiver, the person who grows and provides marijuana for medical use. While caregivers may make recommendations on the strains or types of marijuana to use, they do not generally have a health care role. Some people have suggested the term should be changed to more accurately reflect the person's actual role.

Debilitating medical condition: This definition lists some specific medical conditions and their treatments as debilitating medical conditions and also includes any "chronic or debilitating disease or medical condition or its treatment" that produces several symptoms, including severe or chronic pain and severe nausea.

Issues: Some people suggested that the list of debilitating conditions be expanded. Others suggested that the definition of chronic pain be defined in a more limited way.

Marijuana and Usable Marijuana: The law provides definitions for both of these terms, creating possible conflicts.

Issues: Some participants felt the use of these two terms throughout the Act should be reviewed to ensure that they aren't used interchangeably or in ways that create conflicts.

Physician: The law requires a physician to be licensed in Montana.

Issues: Some people suggested that the definition should be expanded to require that the physician be in good standing with the Board of Medical Examiners or not under a disciplinary order relating to medical marijuana.

Qualifying patient: The current definition requires the person to have been diagnosed by a physician as having a debilitating medical condition.

Issues: The definition does not require that the person have a written certification from a physician, which is needed to apply for a registry card, and it does not require that the person be registered with the state. However, the term is used in other areas of the law, including the definition of medical use. The use of the term as currently defined may create confusion about whether a person must register with the state to be able to use

medical marijuana. Some people suggested that this definition should be clarified and its use throughout the Act be reviewed to ensure that only registered patients may obtain and use medical marijuana.

Usable marijuana: Currently, the definition includes the dried leaves and flowers of marijuana and any mixture or preparation of marijuana.

Issues: Some people have questioned whether all preparations, such as hashish, should be allowed as medical marijuana. Others asked that the word "dried" be changed to "cured."

Suggestions for New Definitions

Grower: This term would be reserved for caregivers with a large number of patients.

Issues: Work group participants agreed it may be necessary to create a new definition for caregivers with many patients. These caregivers would be subject to more regulation but also would be allowed to sell excess marijuana to other caregivers who may not have enough to meet the needs of their patients.

Handler: This term would be defined for people who work for caregivers but do not have a full caregiver role.

Issues: Many caregivers employ people to help with the growing and delivering of medical marijuana. Currently, these employees may legally handle marijuana only if they are registered as caregivers. Some people have suggested that a new definition for these employees is needed, to recognize their more limited role.

Plant: This definition would be added to indicate that a plant is any portion of a marijuana plant that contains a root system. The definition of plant is important, because patients are limited to possessing six plants and caregivers may have a maximum of six plants per patient.

Issues: Law enforcement representatives, in particular, expressed support for creating a definition of plant. They indicated that some caregivers start new plants with cuttings from existing plants. If cuttings have established root systems, law enforcement currently is uncertain whether to count them as a plant or not.

Standard of Care: The Board of Medical Examiners has issued a policy paper on the standard of care expected when a physician is providing care to any patient, including providing a written certification of a debilitating medical condition for medical marijuana. The standard of care includes taking a medical history, performing a relevant physical exam, reviewing prior treatment and the patient's response to that treatment, obtaining and reviewing relevant diagnostic test results, discussing potential treatment options, monitoring the patient's response to a treatment, creating and maintaining patient records, and notifying the patient's primary care physician when appropriate.

Issues: Some stakeholders suggested creating a definition for a standard of care and incorporating all or most of the elements established by the Board. The Board has recommended striking the use of the phrase "bona fide physician-patient relationship" and instead using "standard of care" as appropriate throughout the Act.