

**Emerging Issue: Medical Marijuana**  
**Ambiguities in the "Qualifying Patient" Definition**  
Prepared for the CFHHS Subcommittee on Medical Marijuana  
July 2010

Background

Under the Medical Marijuana Act, the term "qualifying patient" means a person who has been diagnosed by a physician as having one of the debilitating medical conditions that allows the person to apply for a medical marijuana registry card. However, the definition does not require the person to have obtained a written certification from a physician or registered with the state.

Thus in some sections of the law, the use of the term as currently defined appears to allow a person who has not applied for or received a card to use marijuana for medical purposes. This briefing paper provides the subcommittee with policy options for addressing the ambiguities created by this definition, should members want to make a change to clarify the law.

Option 1:

**Change:** Strike the definition for "qualifying patient" and create a definition for "registered patient," who would be a person who has a debilitating medical condition and has a valid registry identification card. Use the term "registered patient" in place of "qualifying patient."

**Effect:** This change would limit all protections offered under the Medical Marijuana Act to people who have obtained a physician's written certification and applied for and received a registry identification card. Key effects include:

- the affirmative defense offered in 50-46-206, MCA, would apply only to registered cardholders;
- the protections offered to physicians who provide written certification would apply only when a physician's patient actually applies for and receives a registry card and may not apply to other patients for whom the physician provides certification, unless 50-46-201(4) is amended; and
- medical use, as defined in 50-46-102(5) would be limited to registered cardholders.

Option 2

**Change:** Keep the definition of "qualifying patient" and add a definition for "registered patient" as noted above. Determine which term would be most appropriate in each section of the law.

**Effect:** This change would make a distinction between a person who has a debilitating medical condition and is qualified to apply for a card and a person who has actually applied for and received a card. The subcommittee would need to determine which term would be appropriate throughout the Act. Some areas of consideration would be:

- 50-46-201(4), which provides protections for a physician providing written certifications;
- 50-46-102(11), where written certification is currently provided to a qualifying patient with a medical condition before the patient submits an application;
- 50-46-103(4)(c), which allows a caregiver to receive reasonable compensation for

assisting a qualifying patient; and

- 50-46-206, the affirmative defense that currently can be used by a qualifying patient.

Option 3

**Change:** Delete the definition of "qualifying patient" and add a definition for "registered patient" as noted above. Where appropriate, use the phrase "person with a debilitating medical condition" instead of "qualifying patient."

**Effect:** Similar to Option 2, this change would make a distinction between a person who has a debilitating medical condition and is qualified to apply for a card and a person who has actually applied for and received a card. However, it would reserve the use of the term "patient" only for registered patients. Substituting the phrase "person with a debilitating medical condition" uses a defined term and plain language to indicate those situations where a person may be covered by some but not all provisions of the act, such as those sections listed under Option 2.