

Emerging Issue: Medical Marijuana *Dispensary States vs. Caregiver States*

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Background

Most states that have medical marijuana laws on the books have a system in which a person who qualifies to use marijuana can choose to have another person help them grow, acquire, or use the marijuana. Generally, these people are called "caregivers," and can help from one person to unlimited numbers of people, depending on the state.

More recently, a few states have authorized dispensaries that may sell medical marijuana to people who have approval to use it and who have named the dispensary as their caregiver.

This briefing paper provides information about the two different types of systems.

The Caregiver System

All 14 states allow a patient to designate a person to act as his or her caregiver. These people generally may grow or acquire marijuana, sell it to the patient, and help the patient use it. The definition of caregiver in Montana and many other states says the person has agreed to manage the well-being of a person with respect to the medical use of marijuana. However, the caregiver is not required to have medical or health care qualifications.

A somewhat different definition is now offered in new model legislation by the Marijuana Policy Project, a national organization advocating reduction or elimination of state penalties for the medical and non-medical use of marijuana.¹ That language, adopted in some states, defines a caregiver as someone who has "agreed to assist with a patient's medical use of marijuana."

Even states with a dispensary system allow an individual person to serve as a caregiver if named by a patient. Those states, however, limit the number of patients an individual caregiver may have. States have established the following limits on the number of patients per caregiver:

- **1 patient:** Alaska, Nevada, New Jersey, Vermont, and Washington;
- **4 patients:** New Mexico, unless the caregiver is a dispensary;
- **5 patients:** Colorado, Maine, Michigan, and Rhode Island, unless the caregiver is a dispensary in those states that allow dispensaries; and
- **No limits:** California, Hawaii, Montana, and Oregon.

¹"Mission Statement," *Marijuana Policy Project* [on-line], available at <http://www.mpp.org/about/mission-statement.html>, accessed July 19, 2010.

Idiosyncracies exist within those limits, however. Although Oregon has no limits on the number of patients a caregiver may have, it limits medical marijuana growers to a maximum of 4 patients or caregivers. Alaska allows a person to be a caregiver to two people, rather than one, if the patients are related to the caregiver by the fourth degree of kinship by blood or marriage. Nevada does not allow a patient to also serve as someone's caregiver — a situation that is currently allowed in Montana.

And even limits that appear stringent have become open to interpretation. In Washington state, the law limits a caregiver to "only one patient at any given time." Some people there are interpreting the language to mean that they may have any number of patients as long as they provide medical marijuana to only one patient at a time.²

The Dispensary System

Colorado, Maine, New Mexico, and Rhode Island have recently adopted laws allowing medical marijuana to be sold through formal business entities licensed by the state. The businesses have different names in different states, but typically are considered to be dispensaries.

The dispensary systems have much in common. The laws and administrative rules creating them include requirements that:

- all principal officers, board members, managers, and employees be named, undergo background checks, and be licensed;
- dispensaries be located a certain distance from schools and, sometimes, other entities;
- dispensaries have:
 - ▶ a system for maintaining records of transactions;
 - ▶ sufficient security measures and policies in place; and
 - ▶ employee policies and training procedures on a variety of topics; and
- the state be allowed to inspect the facility, any growing operations, and all business records, including transaction and sales records and employee records.

Some of the other elements of these laws include:

- a requirement in Maine that all marijuana be grown in the state and that two cardholders inventory the amount of prepared marijuana daily;
- the ability of dispensaries in Colorado to obtain up to 30% of their inventory from another dispensary;

² Phone interview with Kelley Cargil, Washington Department of Health, July 23, 2010.

- requirements in Colorado, Maine, and Rhode Island that principal officers and board members be state residents;
- the ability of local governments to:
 - approve or disapprove the licensing of a dispensary in Colorado;
 - limit the number of dispensaries and establish zoning requirements in Maine; and
 - require that dispensaries meet zoning requirements in Rhode Island.
- requirements in Maine and New Mexico that dispensaries have alcohol and drug-free workplace policies and, in Maine, that applicants for dispensary jobs undergo substance abuse testing;
- a prohibition in Maine on minors being employed by dispensaries;
- regulation by the Department of Revenue in Colorado, rather than the state health agency as is common in most medical marijuana states; and
- several prohibitions in Colorado on who may be licensed. The prohibitions prevent a physician who makes recommendations for medical marijuana use from being involved with a dispensary. Others excluded from involvement include law enforcement officers, employees of state or local licensing authorities, and anyone who has failed to pay taxes, child support, student loans, or judgments due to a government agency.

The Status of Dispensaries

The laws creating and regulating dispensaries are relatively new, and the four states are just getting their programs underway.

New Mexico passed its dispensary law in 2007 and adopted rules for it in 2009. The state licensed five dispensaries in 2009 and just recently licensed another six dispensaries. Each dispensary is limited to 95 mature plants and seedlings, along with an inventory of usable marijuana. When usable marijuana is available, the business notifies patients and dispenses or distributes it according to a plan developed by the dispensary and approved by the state. The location of the businesses are not known to the general public.

The nonprofit entities in New Mexico generally have not reached full production capacity yet.

Maine approved its dispensary law by initiative in November 2009, and the Legislature amended additional requirements into the law in 2010. The state approved licenses for six dispensaries in July. State law allowed the establishment of a dispensary in each of the state's eight public health districts during the first year of dispensary operation. However, the state received qualified applications in only six of the districts and has re-opened applications for the other two districts.

Rhode Island passed its dispensary law in 2009 and is in the process of reviewing the 15 applications it received to establish the first dispensary in that state.

Colorado's dispensary law was signed by the governor in July. The state has not yet licensed a dispensary, but has started the application process. More than 1,000 businesses applied for a license by the Aug. 1 deadline.

Licensing Fees

Each of the four dispensary states require that dispensaries pay an annual licensing fee, as follows:

- **Colorado:** \$18,000 for a dispensary serving more than 500 patients; \$12,500 for a dispensary serving 301 to 500 patients; and \$7,500 for a dispensary with 300 or fewer patients.
- **Maine:** \$15,000.
- **New Mexico:** \$100 currently, with proposed administrative rules suggesting an increase to \$1,000 for an application fee and an annual renewal fee of 7% of gross receipts.³
- **Rhode Island:** \$5,000, plus a non-refundable \$250 application fee for all applicants.

Some Financial Facts

The Maine and Rhode Island state health departments have posted to their Web sites the applications received from entities seeking a dispensary license. Both states require that applicants file a form showing the costs and revenues associated with the initial start-up year, the first full fiscal year, and the second full fiscal year. Applicants also must list the anticipated number of patients they will serve and, in Maine, the average cost they plan to charge for an ounce of marijuana.

In Maine, three companies were selected in July 2010 to operate dispensaries. One of the companies will have four dispensaries in different parts of the state. The forms filed by successful applicants in Maine provided the following information:

- They expect to have 825 patients in this first, start-up year that ends June 30, 2011, and 2,229 patients by June 30, 2013.
- They plan to charge an average price of about \$321 per ounce by the third year of operation, down slightly from the \$330 average price in the first year.
- The businesses expect to bring in nearly \$1.5 million from marijuana sales alone in the first year of operation, with the amount increasing to \$11.36 million in the third year. Those revenues only reflect the sale of the medical marijuana and not any related sales of drug paraphernalia or other products.

³ E-mail from Dominick V. Zurlo of the New Mexico Medical Cannabis Program, July 29, 2010.

The table on P. 6 provides more detailed information from the applications submitted by the successful companies.

In Rhode Island, 15 companies have submitted proposals to the state to establish the first dispensaries there. The state may license up to three dispensaries, but doesn't expect to do so before September.⁴

Applications submitted by the 15 companies show that they anticipate third-year revenues from marijuana sales of anywhere from \$630,000 for an unspecified number of patients to \$30 million for 10,000 patients making 240,000 purchases from the dispensary. Six of the applicants estimated sales revenues of \$3 million to \$5 million in the third year. Only two applicants anticipated higher revenues, and the remaining seven predicted sales revenues below \$3 million.

In New Mexico, producers establish a three-tiered range of prices for medical marijuana. The prices range from about \$115 an ounce to a high of \$420 an ounce. The state estimated that the producer with the highest production levels as of March 2010 had about \$141,270 in revenues, based on reported production of 492 ounces of marijuana, or about 31 pounds. The four other licensed producers reported production of about 99 ounces, or 6 pounds, combined. The state estimated their combined revenues at \$11,423.⁵

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⁴ "RI delays decision on medical marijuana licenses," *The Boston Herald* [on-line], available at <http://www.bostonherald.com/news/national/northeast/view.bg?articleid=1270749&srvc=rss>, accessed July 28, 2010.

⁵"Medical Cannabis Fact and Information Sheet," *New Mexico Department of Health*, March 29, 2010, Pp. 2-3.

FINANCIAL PROJECTIONS: MAINE MEDICAL MARIJUANA DISPENSARIES

The Maine Department of Health selected four non-profit entities to set up six medical marijuana dispensaries, as authorized through a voter-passed initiative in November 2009. The table below shows the amount of money the dispensaries expect to earn solely on marijuana sales (excluding sales of paraphernalia or other products) and the amount they expect to spend on payroll, taxes, benefits, and expenses related to growing and selling the marijuana. It also shows the number of people the dispensaries expect to employ and serve and the amount they will charge per ounce of medical marijuana. The information was included as part of each entity's application.

Applicant	Year	Sales	Expenses	Net Income	Employees	Patients	Price
Safe Alternatives	Startup Year	\$360,000	\$567,191	-\$197,191	8	186	\$250
	First Full	\$1,496,500	\$977,702	\$533,798	9	270	\$275
	Second Full	\$2,243,751	\$1,311,100	\$950,151	10	445	\$300
Remedy Compassion Center	Startup Year	\$388,714	\$728,963	\$33,179	19	375	\$400
	First Full FY	\$1,691,012	\$1,635,861	\$128,060	21	546	\$360
	Second Full FY	\$2,111,514	\$1,961,326	\$272,353	22	655	\$324
Northeast Patients Group -- District 2	Startup Year	\$370,600	\$659,252	-\$264,216	5	111	\$340
	First Full FY	\$1,723,723	\$1,551,507	\$285,868	8.3	251	\$340
	Second Full FY	\$3,102,702	\$2,687,720	\$619,555	12	418	\$340
Northeast Patients Group -- District 4	Startup Year	\$149,727	\$493,290	-\$333,691	4	60	\$340
	First Full FY	\$696,405	\$709,047	\$33,275	5.5	135	\$340
	Second Full FY	\$1,169,961	\$912,388	\$334,713	7.5	210	\$340
Northeast Patients Group -- District 5	Startup Year	\$95,811	\$379,631	-\$277,503	3.3	43	\$340
	First Full FY	\$658,700	\$684,596	\$17,534	5.7	155	\$340
	Second Full FY	\$1,437,163	\$1,246,512	\$285,409	7.9	258	\$340
Northeast Patients Group -- District 6	Startup Year	\$134,995	\$431,723	-\$287,827	3.4	50	\$340
	First Full FY	\$732,829	\$690,983	\$90,165	5.6	150	\$340
	Second Full FY	\$1,295,951	\$1,222,854	\$158,544	7.7	233	\$340

