

SB 423: Montana Marijuana Act

How SB 423 Changed I-148

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Background

The 2011 Legislature approved SB 423, which repealed Montana's Medical Marijuana Act effective July 1, 2011, and replaced it with new provisions for the cultivation, manufacture, and possession of marijuana for use by individuals with debilitating medical conditions. The Department of Public Health and Human Services (DPHHS) remains responsible under SB 423 for registering people who cultivate, manufacture, or use marijuana. However, the new law changed many of the other practices that were previously in place.

This briefing paper highlights some of the key changes that SB 423, known as the Montana Marijuana Act, made to the law enacted through Initiative 148 in 2004.

Patients

SB 423 allows for use of marijuana for the debilitating medical conditions listed in the original law, with changes to the requirements for some conditions. It also added two new medical conditions — painful peripheral neuropathy and admittance into hospice care — and eliminated DPHHS's authority to add new conditions to the statutory list.

Changes to the I-148 conditions are as follows.

- A cancer, glaucoma, or HIV/AIDS patient must be symptomatic and the condition must be adversely affecting the patient's health.
- Severe or chronic pain must be both severe *and* chronic and of such intensity that it significantly interferes with daily activities as documented by the patient's treating physician and by either objective proof of the cause of the pain or by confirmation of the diagnosis by a second physician who has conducted a physical exam of the patient.
- Nausea must be intractable, rather than "severe."
- Seizures must be caused by an "intractable seizure disorder."
- The condition listed as "severe or persistent muscle spasms" is changed to "a central nervous system disorder resulting in chronic, painful spasticity or muscle spasms."

A person applying for a registry identification card because of a medical condition also:

- must be a Montana resident;
- may not be on probation, parole, or under the supervision of a youth court; and
- if the applicant is under the age of 18, must obtain written certification from two physicians.

Physicians

SB 423 placed several restrictions on physicians and created additional requirements for the documentation they must provide as part of the patient's application for a registry card.

Physicians may not:

- use telemedicine to provide written certification or use any electronic means as the sole method of obtaining the information required for the written certification;
- accept or solicit anything of value from a provider or offer a discount or anything else of value to a person who uses or agrees to use a particular provider; or
- examine a patient at a location where marijuana is cultivated or manufactured if the examination is for the purpose of diagnosing a debilitating medical condition.

Physicians must meet a defined standard of care when providing the written certification needed to apply for a registry card. The definition for the standard of care was taken from a Board of Medical Examiners position paper on providing written certification for obtaining a marijuana card.

Physicians also must provide statements indicating that:

- the person suffers from a debilitating medical condition, including a description of why the condition is debilitating and the treatment options undertaken;
- the treatment options have not been effective; and
- the physician:
 - ✓ is the patient's treating physician or referral physician;
 - ✓ will provide management and routine care for the condition;
 - ✓ has reviewed the patient's other medications and considered the potential interactions with marijuana;

- ✓ is reasonably certain that the patient would benefit from the use of marijuana and has explained to the patient the potential risks and benefits of marijuana use; and
- ✓ will monitor the patient's response to the use of marijuana and evaluate the effectiveness of the treatment.

The physician also must list any restrictions on the person's activities as a result of marijuana use and specify the time period for which marijuana use would be appropriate, up to 1 year.

DPHHS must provide the Board of Medical Examiners with the names of physicians who provide more than 25 written certifications in a 12-month period, so the Board can review the physicians' practices to determine whether they meet the standard of care.* Physicians whose practices are reviewed must pay the cost of the review.

Caregivers/Providers

I-148 allowed a patient to designate someone to grow or manufacture marijuana for the patient. That person was known as a "caregiver." The law placed no limits on the number of patients a caregiver may have and allowed caregivers to receive "reasonable compensation."

SB 423 replaced the term "caregiver" with the term "provider" and limited to three the number of people for whom a provider may grow or manufacture marijuana or related products.* A person may not be registered as a provider if the person is also registered to use marijuana and has designated someone else as a provider.

Providers may not be paid for their services or products,* but a patient may pay any fee DPHHS charges to register the provider. Providers also may not share with or lease or rent to another provider any portion of the property where they cultivate or manufacture marijuana.

SB 423 also requires that a person named as a provider:

- be a Montana resident;
- submit fingerprints for a fingerprint and background check by the Montana Department of Justice and the FBI; and
- agree not to divert marijuana to any other persons.

DPHHS may not register a person as a provider if the person:

- has been convicted of a felony offense or any drug offense;
- is on probation, parole, or under the supervision of a youth court; or
- has failed to pay student loans, child support, or taxes, penalties, or judgments due to a government agency.

SB 423 allowed DPHHS or law enforcement agencies to conduct unannounced inspections during business hours of either a provider's registered premises or records of transactions.*

Other Provisions

SB 423 made a number of other changes to the original law, as follows:

- Registered cardholders and providers may possess 4 mature marijuana plants, 12 seedlings, and 1 ounce of usable marijuana; the original law allowed possession of 6 plants of any type and 1 ounce of usable marijuana.
- Cardholders may not use marijuana in plain view of the public or in a place open to the public. Cardholders and providers may not grow or manufacture marijuana in a manner that is visible from the street or another public area.
- Cardholders must carry their cards and provide the card and photo identification if requested by law enforcement or a court.
- Local governments may adopt ordinances or resolutions regulating providers and prohibiting them from opening storefront businesses.
- Schools may prohibit cardholders from participating in extracurricular activities.
- Landlords are not required to allow tenants who are cardholders or providers to cultivate, manufacture, or use marijuana in the rental property.
- Law enforcement officers who have reasonable cause to believe that a cardholder is driving under the influence may apply for a search warrant to obtain a sample of blood for testing. A person may be charged with DUI if the person's tetrahydrocannabinol (THC) level is 5 ng/ml.
- Cardholders and providers may not advertise marijuana or marijuana-related products.*
- A sentencing judge may require an offender to surrender a registry identification card as part of the offender's sentence.
- DPHHS must set up a hotline to receive reports of suspected abuse and may either investigate the reports or refer them to a law enforcement agency.

* SB 423 provisions marked with an asterisk have been enjoined in an ongoing legal action and are not currently in effect.