

Medical marijuana

Changes to Washington's medical marijuana law took effect on July 22, 2011. What does this mean for cities?

Cities should pay close attention to several key provisions in the law:

Civil and criminal protections

The new law grants some additional civil protections for medical marijuana patients. (For example, a patient cannot be denied an organ transplant based solely on use of medical marijuana.) The bill as passed by the Legislature would have granted protection from arrest and prosecution to those participating in a voluntary state registry. However, the registry provisions were among the vetoed sections. The result is a continuation of the status quo, where qualified patients and providers may use an affirmative defense at trial, but have no specific protection from arrest and prosecution.

Dispensaries

The proliferation of retail medical marijuana dispensaries was one of the primary drivers behind the legislation and one of the most compelling issues facing cities. The law, as it takes effect, does not legalize dispensaries. In fact, the law contains a more stringent requirement with a new 15-day waiting period before a provider can switch to serving a new patient. It is widely understood that the changes clarify that dispensaries are not permitted under state law.

Collective gardens

The law provides a new option for marijuana production in the form of collective gardens. A collective garden can serve up to 10 qualified patients and can have up to 15 plants per patient, but no more than 45 plants and no more than 24 ounces of useable cannabis per patient up to a total of 72 ounces. Only qualified patients may participate in or receive cannabis from a collective garden. However, there is no limit on the number of collective gardens a patient may be a member of and no limit on the amount of time that they must maintain their membership. The lack of regulations is cause for concern that a system of interconnected collective gardens could effectively operate as commercial dispensaries.

Land use regulations

Cities are allowed to adopt and enforce zoning requirements, business licensing requirements, health and safety requirements, and business taxes on the production, processing, and dispensing of cannabis. Based on this provision, a number of jurisdictions are weighing the need to adopt regulations specific to collective gardens. Those considering this type of action should consult with their city attorney.

Local government liability

The law provides for immunity from civil and criminal liability for actions taken by cities and their employees in good faith and within the scope of their duties.

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The Medical Marijuana Act

In November 1998, Washington voters approved Initiative 692 – the Medical Marijuana Act. The initiative's primary focus was to create an affirmative defense against criminal prosecution for marijuana possession for qualifying patients, their providers, and their physicians.

With the exception of a few amendments in 2007, the Act remained relatively unchanged until the proliferation of marijuana dispensaries led to a call for statewide regulation.

In 2011, the Legislature passed **E2SSB 5073**, which would have created a state system of regulation for producing and dispensing marijuana for medical purposes. However, significant sections of the bill were vetoed by the Governor – including all provisions for state regulation.

What are cities doing in response?

There are still many unanswered questions about the changes to state law, especially around collective gardens. A number of cities are concerned about the possible proliferation of collective gardens, multiple collective gardens co-locating, and the potential impacts on neighbors.

Cities are responding in a variety of ways including enacting moratoria, prosecuting dispensaries, establishing regulations, and simply taking no action. In addition, the City of Seattle recently passed an ordinance that would require any commercial medical marijuana operation to comply with all applicable laws including city business licensing and taxing requirements.

With the ambiguity surrounding medical marijuana, AWC recommends that cities consult with their legal counsel and carefully weigh the risks before taking any action.

Can we expect clarification or changes to the medical marijuana law?

The Legislature is likely to revisit marijuana laws during the 2012 session. In fact, they may have little choice as an Initiative to the Legislature – backed by Seattle City Attorney Pete Holmes, former U.S. Attorney John McKay, the American Civil Liberties Union, and others – is in the signature-gathering process.

This initiative goes beyond medical marijuana: it would legalize marijuana for people older than 21 and authorize the state Liquor Control Board to regulate and tax marijuana. Proponents have until December 30 to get the required 241,153 signatures. If they succeed, the Legislature has three options when they convene in January 2012:

- Approve the initiative and it becomes law;
- Reject or refuse to act on the initiative, and it will be placed on the November 2012 ballot; or
- Pass an amended version, and both versions go to the November ballot.

What are other states and the federal government doing?

Sixteen other states and Washington, D.C., have some form of medical marijuana law. Of particular note is Colorado, with 17,000 registered patients and new dispensary regulations, and California, with 11,000 registered patients and unregulated dispensaries that have an affirmative criminal defense.

Any use of marijuana, including the medical use, remains prohibited under the federal Controlled Substances Act. Anyone who manufactures, distributes, dispenses, or possesses marijuana for any purpose still may be prosecuted under federal law. (This is why medical providers are unable to “prescribe” marijuana and pharmacies are unable to dispense it.)

In June 2011, the U.S. Department of Justice issued a memo reiterating its position that marijuana in any form remains illegal under the Controlled Substances Act and that the Department retains its right to prosecute those who produce or possess marijuana, as well as those who knowingly facilitate such activities. They continue to indicate that they will prioritize their resources in such a way that they are unlikely to target an individual patient who is in compliance with state law, but expressed concerns about the proliferation of commercial operations.

Where can I get more information?

MRSC has posted a variety of useful information, including examples of ordinances, on its website at www.mrsc.org/subjects/legal/medmarireg.aspx

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