

HISTORY OF CHAPTER 86, SUBCHAPTER 2  
MARIJUANA USE FOR PERSONS WITH SEVERE ILLNESS

2004 Acts and Resolves No. 135 created subchapter 2 of Chapter 86, Marijuana Use for Persons with Severe Illness. Act 135 created:

- an exemption in State law from criminal penalties for the use of marijuana to alleviate the symptoms or effects of a debilitating medical condition
- a Registry of patients and their caregivers who are eligible to receive this exemption (caregivers not exempted from penalties for use)

The Marijuana for Symptom Relief Registry began in late October 2004.

2012 Acts and Resolves No. 65 created the Dispensary Program, which began in the summer of 2012. Act 65 created:

- a Registry of dispensaries, capped at 4, exempted from criminal penalties associated with acquiring, possessing, cultivating, manufacturing, transferring, transporting, supplying, selling, and dispensing marijuana and marijuana-infused products to patients and caregivers on the Registry

Act 65 mandated a survey and report from DPS on:

- actual and projected income and costs from dispensary program (budget for FY14 is \$87,600; revenue for FY13 was \$100,150 and projected revenue for FY14 is \$172,600)
- recommendations for how dispensaries could deliver (trip tickets)
- whether prohibiting growing if the patient designates a dispensary interferes with patient access to symptom relief, and if so, recommendations for regulating patients who are both growing their own marijuana and using a dispensary (recommended further study)

Act 65 also mandated a report from JFO regarding costs and revenue from the program and the feasibility of a sales tax on marijuana sold through dispensaries.

OVERVIEW OF CHAPTER 86, SUBCHAPTER 2  
MARIJUANA FOR MEDICAL SYMPTOM USE BY PERSONS WITH SEVERE ILLNESS

Registered patient requirements:

- Patient is diagnosed with a **debilitating medical condition**
  - (A) cancer, acquired immune deficiency syndrome (AIDS), positive status for human immunodeficiency virus (HIV), multiple sclerosis (MS), or the treatment of these conditions if the disease or the treatment results in severe, persistent, and intractable symptoms; (*H.213 proposes adding PTSD to this list*)

OR

- (B) a disease, medical condition, or its treatment that is chronic, debilitating, and produces severe, persistent, and one or more of the following intractable symptoms: cachexia or wasting syndrome, severe pain, nausea, or seizures
- By a **health care professional**
  - licensed to practice medicine, physician assistant, or advanced practice registered nurse (*S.247: and naturopathic physician under 26 V.S.A. chapter 81 who has special license endorsement authorizing individual to prescribe, dispense, and administer*)
  - Includes professionally licensed MDs, PAs, and RNs in NH, MA, or NY
- During the course of a **bona fide health care professional-patient relationship**:
  - not less than 6 months' duration treating/consulting relationship; health care professional must have completed a full assessment of patient's medical history, current medical condition, and personal physical exam. (*S.247: 6 months' duration requirement does not apply if patient has terminal illness*)

Registered care provider requirements:

- at least 21 years of age
- never convicted of a drug-related crime (*S.247 proposes striking this requirement and adding language that DPS shall adopt rules for approval or denial of caregiver application based on criminal history record, including whether applicant who has been convicted or has pending charge of drug-related offense or violent felony has been rehabilitated and should otherwise be eligible for Registry ID card. No denial solely on basis of other type of criminal conviction.*)
- agreed to be responsible for managing the well-being of a registered patient with respect to that patient's use of marijuana for symptom relief
- serve as caregiver for one patient only
- (*S.247 adds language specifying that a registered patient under 18 may have two registered caregivers*)

### Dispensaries:

- limit of 4 (currently Burlington, Brandon, Montpelier, and Brattleboro)
- 1,000 registered patient cap
- may provide marijuana at only one location, and may have a second associated cultivating facility. Both facilities = 1 dispensary.
- shall have a sliding fee scale system
- may not be located within 1,000 feet of school or child care facility
- must have working security measures, including alarm system
- shall be operated on a nonprofit basis but need not be recognized as a tax-exempt organization by the Internal Revenue Service. (*S.247 makes it clear that dispensaries are exempt from corporate and personal taxes at the State level*)
- must undergo, at own expense, an annual financial audit by independent CPA and shall submit the results to DPS no later than 60 days after the end of the dispensary's fiscal year

### Designating a dispensary:

- Registered patients may either grow their own or designate a dispensary
- Act 65 changed the language of the statute from *a patient may not grow marijuana if he or she designates a dispensary* to → If a patient designates a dispensary, patient and caregiver may not grow or obtain marijuana or marijuana-infused products from any source other than the designated dispensary (*effective July 1, 2014*)

### Possession limits:

#### For registered patients/caregivers:

- amount of marijuana collectively possessed between the registered patient and the patient's registered caregiver: no more than two mature marijuana plants, seven immature plants, and two ounces of usable marijuana

#### For dispensaries:

- cultivate and possess at any one time up to 28 mature marijuana plants, 98 immature marijuana plants, and 28 ounces of usable marijuana. However, if a dispensary is designated by more than 14 registered patients, the dispensary may cultivate and possess at any one time two mature marijuana plants, seven immature plants, and two ounces of usable marijuana for every registered patient for which the dispensary serves as the designated dispensary

### Other limitations for registered patients/caregivers growing on their own:

- may only grow marijuana in a single "secure indoor facility," a building or room equipped with locks or other security devices that permit access only by the registered patient or registered caregiver.
- may only transport in locked container
- may only legally use marijuana for purposes of symptom relief within the State of Vermont. May not use marijuana in public, while operating a motorized vehicle,

in a workplace, while operating heavy machinery or handling a dangerous instrumentality, or in a manner that endangers the health or well-being of another person

- Coverage or reimbursement by public or private health insurer, employer, or for purposes of worker's comp is not required.

Other limitations for dispensaries:

- May not dispense to anyone other than registered patient or caregiver designated at that dispensary for any other purpose besides use for symptom relief.
- May not acquire usable marijuana or plants from any source other than registered officers, board members, or employees who cultivate marijuana in accordance with this chapter
- May not dispense more than two ounces usable marijuana to a registered patient or caregiver in a 30 day period
- May not dispense an amount that the dispensary employee knows would put a patient or caregiver over the possession limit

Fee system:

- Registry (Patient/Caregiver) Fees:
  - Application fee for patients and caregivers: \$50
  - Annual renewal fee for patients and caregivers: \$50
  - Reissued card fee: \$25 (lost or changes made to information, including change of caregiver)
- Dispensary fees:
  - Apply to become a dispensary and hold a registration certificate: \$2,500
  - Registration Certificate Fee: \$20,000, annual renewal: \$30,000
  - ID card fee: \$50 per employee, annual \$50 renewal fee per employee
  - Background check fee: per employee
  - Patient change of dispensary: \$25

Patient registration process:

- Applicant and applicant's provider must fill out a registration form. Form must be notarized (*S.247 removes this requirement*) and attach a digital photograph. Health care provider must verify that the patient has a debilitating medical condition and that the health care provider has had a "bona fide health care provider-patient relationship" (a treating or consulting relationship of not less than six months' duration, in the course of which a health care provider has completed a full assessment of the registered patient's medical history and current medical condition, including a personal physical examination)
- 6 month relationship requirement may be waived if the debilitating medical condition is of recent or sudden onset and patient hasn't had a previous health care provider who is able to verify the nature of the disease and its symptoms.

- The Registry will process an application within 30 days. If application is approved, patient will be notified in writing and receive a Marijuana Registry Identification Card. If application is denied, patient will be notified in writing and be advised of the right to appeal the denial to the review board.
- Registrations are issued for one year and are renewable. A new application packet (forms, fee, and photo) must be submitted for each renewal request

Dispensary registration process:

- Application to DPS must include fee, legal name, articles of incorporation and bylaws of dispensary, proposed physical address, description of grow center, data (including fingerprints) for all employees, proposed security measures, and proposed recordkeeping protocol
- DPS shall consider in its review of the application:
  - Input from patients and caregivers
  - Overall health needs of qualified patients
  - Geographic convenience
  - Adequate supply to registered patients in the State
  - Board members' experience running a nonprofit organization
  - The sufficiency of the applicant's plans for record-keeping
  - The sufficiency of the applicant's plans for safety and security

Effect of criminal conviction or charge on registration:

Caregivers:

- Caregiver application will be automatically denied if the person has ever been convicted of a drug related crime (*S.247 proposes striking and adding language that DPS shall consider whether caregiver applicant has been rehabilitated*)

Dispensaries:

- No registry ID card shall be issued to any applicant who has been convicted a drug-related offense or a violent felony or who has a charge pending for such an offense.
- Any other criminal charge or conviction shall not automatically disqualify an applicant. DPS shall set rules considering whether a person with a conviction has been rehabilitated.
- However, a dispensary may deny a person an employment opportunity or board membership based on his or her criminal history record.
- An applicant who is denied a registry ID card may appeal DPS's determination in superior court.