

History of Colorado's Medical Marijuana Laws

Overview

Colorado has two medical marijuana laws. Colorado's first and oldest medical marijuana law is a constitutional amendment passed by the voters authorizing patients and their caregivers to possess, cultivate, and use medical marijuana. Colorado's second medical marijuana law enacted in the summer of 2010 established the Colorado Medical Marijuana Code, C.R.S. 12-43.3-101 *et seq.*, which creates a dual licensing scheme that licenses and regulates medical marijuana businesses at both the state and local level.

Please note that Colorado's Medical Marijuana laws are constantly changing so please conduct your own research on new developments in the law.

Colorado's First Medical Marijuana Law: Amendment 20

In November of 2000, voters of the state of Colorado passed Amendment 20 to the state's constitution, codified in article XVIII, section 14. This article effectively legalized limited amounts of medical marijuana for patients and their primary caregivers.

Amendment 20 authorizes a patient who has been issued a Medical Marijuana Registry identification Card, or that patient's primary caregiver who has been identified on the patient's Medical Marijuana Registry Identification Card, to possess:

- (a) No more than two (2) ounces of a usable form of marijuana¹; and
- (b) Not more than six (6) marijuana plants, with three (3) or fewer being mature, flowering plants that are producing a usable form of marijuana.

Early Dispensaries

In the early 2000s, some quality caregivers began providing marijuana to larger numbers of patients. These caregivers mostly operated delivery services or at secret retail locations. To try and end the commercial distribution of medical marijuana, the Colorado Department of Public Health and Environment ("Health Department") at the behest of the Drug Enforcement Administration created an informal rule barring caregivers from providing medical marijuana to more than 5 patients.

Sensible Colorado sued the state over this arbitrary policy. After an extensive hearing, they won in 2007. After their victory, caregivers were allowed to provide medicine to as many patients as they could handle. **Sensible Colorado's court victory paved the way for store front dispensaries across the state.**

In 2009, the Health Department was at it again to limit the commercial distribution of medical marijuana. This time, they decided to go through a formal rule making process to enact their five patient caregiver limit. They needed the prestigious Board of Health to adopt their rule. Again, Sensible Colorado organized the opposition. More than 300 patients, caregivers, and supporters came out to

¹ Usable marijuana includes hash and oils.

testify at the Board of Health hearing in July 2009. By a one vote margin, the Board of Health of rejected the five patient limits for caregivers, effectively approving the dispensary model. The Colorado “Green Rush” was born.

The Ogden Memorandum

A few months after our victory in front of the Board of Health, President Obama’s Deputy Attorney General for the United States, David W. Ogden, [issued a memorandum stating](#) that it was not a wise use of resources to prosecute medical marijuana patients and caregivers who were in “clear and unambiguous” compliance with state law.

Many saw this as a green light from the federal government to open up a medical marijuana business.

Colorado Legislature Passes HB 10-1284 and SB 10-109

Although many caregivers were operating lawful retail outlets, Amendment 20 did not *expressly* authorize or regulate the commercial distribution of medical marijuana. In December 2009, Sensible Colorado held a community-wide stakeholders meeting that was attended by hundreds of patients and caregivers to devise a legislative strategy to ensure that dispensaries would be around to stay. At this meeting, there was a strong consensus that Colorado needed a state regulated medical marijuana distribution system.

The next legislative session, the Colorado Legislature enacted the Colorado Medical Marijuana Code - the most comprehensive system of medical marijuana distribution and regulation in the world - through the passage of SB 10-109 and HB 10-1284. Without weighing in on the merits or the constitutionality of these bills, it is important to note that these bills not only license commercial businesses for the distribution and production of medical marijuana, but impose new restrictions on patients, caregivers, and doctors.

Codified at C.R.S. 12-43-3.101 *et seq.*, the Colorado Medical Marijuana Code regulates and licenses: (1) Medical Marijuana Centers (Dispensaries); (2) Medical Marijuana Optional Premise Cultivation Facilities; and (3) Infused Products Manufactures (e.g. edibles, tinctures, lotions, oils). Pursuant to the Code, counties and cities may adopt their own rules and licensing procedures for medical marijuana centers or ban these businesses all together. Given this new statutory option for local bans, access to Medical Marijuana Centers will depend, in large part, on local politics and grassroots organizing. Regardless of a local ban on a Medical Marijuana Center, no local government has the authority to ban caregivers or patients²

Senate Bill 10-109 was enacted to regulate doctors who certify medical marijuana for their patients. In short, it mandates that patients see a doctor in person in order to receive a recommendation.

For a summary of HB 10-1284 and SB10-109 please click here to go to our Legal FAQ.

The Clean up Legislation: HB 11-1043

² Some localities do impose zoning requirements on caregivers.

The following year after the passage of HB10-1284, the legislature enacted HB11-1043 a bill to clean up some regulatory inconsistencies. The bill provides new restriction on licensed business and caregivers. Notably, the bill requires caregivers to register their “caregiver grow” with the Colorado Medical Marijuana Enforcement Division.

HB11-1043 also provided some additional protections for patients and loosened some restrictions for employees of licensed businesses. The bill provides that patients who make less than 185% of the federal poverty are exemption from paying the annual registry fee and from paying sales tax on their purchases. HB11-1043 also protects patient medical records and prohibits law enforcement from profiling patients.

To read a summary of HB 11-1043 click here to go to our LEGAL FAQ.

The Implementing Regulations

The Colorado Medical Marijuana Code requires both the Colorado Department of Public Health and Environment and the Colorado Medical Marijuana Enforcement division to enact implementing regulations. These regulations were enacted throughout 2011 and can be found [here](#) and [here](#).

The regulations impose significant requirements on caregivers including, providing extra services to their patients besides the provisions of medical marijuana.

More regulations will be enacted to implement HB11-1043.

Today: A Renewed Attack by the Federal Government

Today Colorado has more licensed medical marijuana businesses than any state in the Country. However, the hand-off approach of the federal government has come to an end. In June 2011, [a new memorandum](#) was issued by the current Deputy Attorney General for the United States that attempts to limit the scope of the Ogden Memorandum.

In January 2012, John Walsh, the U.S. Attorney for Colorado began sending out letters to state approved businesses that were within a 1000 feet of school, telling them to shut down within 45 days or face civil or criminal penalties. To date, around 50 medical marijuana businesses have received a letter telling them to close. All of them have closed.