

# The New Medical Marijuana Program

By  
Spence Flatgard

**M**ississippi is now the 37th state to allow patients to have access to medical marijuana. The Legislature enacted the Mississippi Medical Cannabis Act (Senate Bill 2095) to establish the strictly regulated program. This article provides a brief overview of how, when, and where patients will be able to participate in the program, addressing some of the most frequently asked questions about the Act's restrictions.

## HOW WILL IT WORK?

### Qualified Patients, Healthcare Providers & Dispensaries

An important point to initially understand is that medical marijuana is treated differently under state and federal law.<sup>1</sup> Marijuana is still illegal to grow and sell under federal law. States such as Mississippi have authorized programs to allow marijuana to be grown and sold for medical purposes only under a very narrow, strict regulatory regime. The Mississippi Medical Cannabis Act (the "Act") is a 455-page statute which allows for the establishment of businesses and facilities to cultivate, process, transport, and sell medical cannabis through programs administered primarily by the Mississippi Department of Health.

Because under federal law doctors cannot prescribe marijuana and pharmacies cannot dispense it, under the Act, certain health care providers in Mississippi (including doctors, physician assistants, nurse practitioners, and optometrists) may certify patients as having a diagnosis of one of twenty-eight qualifying debilitating medical conditions<sup>2</sup> that may receive medical or palliative benefit from the use of medical marijuana. Those certifications must come through an in-person assessment (not through telemedicine) from a

health care provider with whom the patient has a bona fide practitioner-patient relationship. Patients shall be required to have a follow-up visit within six months.

Health care providers will be required to take eight hours of continuing medical education to issue patient certifications within their scope of practice. For patients between the age of 18 and 25, certifications from two practitioners, one of whom is a doctor, will be needed. Also, for minors, certifications can only be written by a doctor and with the written consent of their parent or guardian.

Once the patient has the certification, the qualifying patient can then receive an identification card for \$25 issued through the Mississippi Department of Health. The qualifying patient can then take their identification card to a licensed dispensary and purchase a limited amount of medical marijuana each week amounting to up to roughly three ounces per month, as needed. Under very limited circumstances, non-resident qualifying patients in Mississippi may apply for a non-resident identification card which will be valid for a fifteen day period. For patients who need assistance obtaining medical marijuana, there will be licenses for designated caregivers who may serve no more than five patients. Forms of products sold to patients with cards will be edible, topical, smokable, and tincture, and all products will be capped with THC potency limits.

### "Seed to Sale" Tracking

A critical provision in the Act is the requirement of a "seed-to-sale tracking system." Some states, (eg., Oklahoma) did not begin their program with this critical system in place to help prevent medical marijuana from being



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grown and easily sold on the black market, escaping the strict regulation and taxation of the state program. Fortunately, Mississippi will avoid that disaster with technology which will allow regulators and law enforcement to track all medical marijuana in a highly restrictive environment.

#### **Regulation, Licensing & Taxes**

The Mississippi Department of Health will be the primary state agency responsible for regulating the program

and will issue separate licenses to businesses performing the different roles in the process, including cultivation, processing, transportation, disposal, testing, and research. Cultivator and processor licenses will be issued for different tiers, based upon size. These licenses will initially require that Mississippians own 35% of the applicant business with these residency requirements expiring on December 31, 2022. Smaller “micro cultivator” and “micro processor” licenses are carved out for smaller, completely Mississippi-owned businesses.

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Both the Mississippi Department of Health and the Department of Revenue are in the process of promulgating their respective rules and applications for licenses on an expedited basis.

#### **WHEN WILL IT START?**

The Department of Health is expected to issue its first licenses to cultivation facilities as soon as late June or early July of this year, and the Department of Revenue is expected to issue its first licenses to dispensaries in late July or early August. As medical marijuana is federally illegal, it cannot cross state lines to be brought in from out of state, so it must be grown in cultivation facilities in Mississippi. Once seeds go into the ground in late July or early August, it will take about 4-6 months for the product to be fully grown, dried, processed, and tested by licensed testing facilities. Most businesses anticipate that the earliest that qualifying patients will be able to purchase medical marijuana will be December of this year.

#### **WHERE WILL IT BE CULTIVATED & SOLD TO PATIENTS?**

Medical marijuana cultivation facilities and dispensary locations must be approved through the licensing process based upon several considerations. First, a local government can vote to “opt-out” of the program and not allow cultivation facilities, processing businesses, or dispensaries in their jurisdiction. That vote needs to have happened by May 3, 2022, and the governing authority can later vote to opt back into the program. Also, the voters of that jurisdiction have the option to overturn a decision to opt-out and call for a referendum to allow for those businesses to be located in their city.

**There are restrictions on where a medical marijuana business may locate and several provisions with respect to a county and municipal government's authority:**

- A county or municipality may enact ordinances or regulations not in conflict with the Act governing the time, place, and manner of operations.
- The main point of entry cannot be within one thousand feet of the property line of a school, church, or daycare. The business may obtain a waiver from such establishment if it is not within five hundred feet of the establishment.
- No dispensary may be located within 1,500 feet of another dispensary, measured from front door to front door.
- A dispensary may be located in an area zoned commercial, if the county or city has authorized the entity to operate there. This may be accomplished through a variance or a change to existing ordinances.
- A cultivation or processing facility may be located in an area zoned agricultural or industrial or an area for which those activities are not prohibited.
- Governing bodies may require a medical marijuana business to obtain local licenses, permits, or registration to operate and charge fees consistent with other businesses.

## OTHER LEGAL RESTRICTIONS

Other legal prohibitions under the Act include the following, as medical marijuana:

- Cannot be grown outdoors or "homegrown."
- Cannot be smoked in public.
- Cannot be dispensed to minors without an accompanying parent or guardian.
- Cannot be marketed to minors.
- Cannot be obtained via telemedicine or home delivery.

### Further, the Act:

- Does not require employer accommodations for employees.
- Does not require landlord accommodations for tenants.
- Does not require reimbursement through private insurance or Medicaid.

## MOVING FORWARD

The implementation of the program will involve several practical legal issues (banking, real estate, insurance, etc.) beyond the scope of this article which arise through the interesting interplay of federal and state laws while more states continue to enact medical marijuana programs. One of the advantages of Mississippi being the 37th state to enter this arena is our ability to see how other states have addressed this tension. Those issues may be explored in future editions of *The Mississippi Lawyer*.

As we start down this path this year, Mississippi patients will have access to medical marijuana through a strictly regulated program crafted by our Legislature which successfully reflected the will of their constituents expressed through Voter Initiative 65 while accommodating the needs of various stakeholders in establishing this new program for Mississippi's qualifying patients.

## Endnotes

<sup>1</sup> Marijuana is listed as a Drug Enforcement Agency Schedule 1 drug with accompanying federal laws criminalizing its growing and selling. See Controlled Substances Act 21 U.S.C. §§ 801-971. However, every year since 2014, Congress has enacted the Rohrabacher Amendment (Consolidated Appropriations Act, 2019, Publ. L. No. 11607 S 537, 1333. State. 12, 138 (2019)) which prohibits the Department of Justice from using appropriated funds to prevent a state from implementing their own laws to authorize the use, distribution, possession or cultivation of medical marijuana.

<sup>2</sup>Qualifying conditions include: cancer, Parkinson's disease, Huntington's disease, muscular dystrophy, glaucoma, spastic

quadriplegia, HIV, AIDS, hepatitis, ALS, Crohn's disease, ulcerative colitis, sickle-cell anemia, Alzheimer's disease, agitation of dementia, post-traumatic stress disorder, autism, pain refractory to appropriate opioid management, diabetic/peripheral neuropathy, spinal cord disease or severe injury. It may also include the treatment of a chronic, terminal debilitating disease or medical condition or its treatment that produces wasting syndrome, chronic pain, severe nausea, seizures or persistent muscle spasms. The Mississippi Department of Health is authorized to include other serious medical conditions or their treatment in the future.