



# Marijuana Laws that Impact Health Facilities

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*This document provides guidance – it does not provide legal advice. Health facilities are encouraged to consult a professional legal advisor to determine the specific applicability of the laws to their type of business.*

In November 2000, voters approved an amendment to the Colorado Constitution allowing the use of marijuana for medical purposes (see Article XVIII, §14). In November 2012, voters approved another amendment to the Colorado Constitution (see Article XVIII, §16) to decriminalize consumption of small amounts of marijuana for non-medical use. After each constitutional amendment, the General Assembly enacted legislation to create a framework for the sale, possession, and use of marijuana. This document provides guidance to health facilities regarding the impact of medical and retail marijuana laws in Colorado.

- Section I identifies the places where marijuana is prohibited.
- Section II discusses considerations for facilities who accept federal funding.
- Section III discusses issues that facilities should consider when marijuana is allowed on the premises.

## Section I. Places Where Marijuana is Prohibited

Marijuana is not authorized:

- at places for which there are specific prohibitions in state or local codes.
- at places that have adopted policies that prohibit marijuana.
- in spaces where it would be consumed publicly.

**Places Where Marijuana is Explicitly Prohibited by State/Local Codes.** Businesses should determine if state law or local jurisdictions have established any prohibitions for medical or retail marijuana. For example, retail marijuana is explicitly prohibited by state law on the premises of group homes for persons with developmental disabilities.<sup>1</sup>

**Business Policies May Prohibit Marijuana.** Medical and/or retail marijuana may be prohibited (or otherwise restricted) by any business that chooses to do so.<sup>2</sup> Facilities may choose to prohibit:

- Possession on the premises by staff or customers.
- Possession during the course of providing services off site (such as a mobile clinic).
- Staff use during business and non business hours. To ensure clarity, the employer's policy should be specific about substance use restrictions and testing.

**Prohibition of Public Consumption.** Public consumption of marijuana is prohibited by law<sup>3</sup> However, public possession within the statutory limits (2 ounces of medical and 1 ounce of retail marijuana) is authorized unless the facility chooses to implement a policy banning marijuana possession on the premises.

## Section II. Considerations for Facilities that Accept Federal Funding

Facilities are encouraged to seek legal advice about the impact that allowing marijuana at the workplace could have on continued eligibility for federal contracts and grants. Although Colorado state law allows marijuana use, many federal laws do not. Under these federal laws, businesses may face either criminal or civil enforcement.

The federal Controlled Substances Act (CSA) classifies marijuana as a Schedule I controlled substance and outlaws possession, cultivation, or distribution except for authorized research. Persons in violation may face criminal prosecution and property may be subject to forfeiture. Through a series of guidance memoranda, the U.S. Department of Justice indicated that it would not focus federal resources on the prosecution of marijuana use in violation of CSA if it is in compliance with state law; instead it would focus on various activities deemed particularly harmful such as the distribution of marijuana to children and driving under the influence. However, these memoranda do not decriminalize marijuana use but instead give law enforcement officials discretion as to what will receive the most attention.<sup>4</sup> Facilities may wish to seek legal advice as to the extent that these memoranda shield them from federal prosecution.

In addition, the federal Drug-Free Workplace Act of 1988 requires any entity that receives federal contracts of more than \$150,000 or that receives any federal grant to maintain a drug free workplace. Failure to make good faith efforts to do so disqualifies them from eligibility for federal funds.<sup>5</sup>

## Section III. Issues for Consideration for Businesses Where Marijuana is Allowed

Businesses not subject to statutory restrictions on marijuana use may choose to allow marijuana. If allowed, facilities should consider establishing policies and procedures that take into account:

- employee and client safety.
- local codes and state laws regarding issues such as possession, use, and impairment.

**Employee and Client Safety Measures.** Facilities that allow for marijuana consumption should consider establishing measures that protect their employees and clients from harm, such as:

- processes to monitor the level of impairment of employees<sup>6</sup> and of clients.
- storage of marijuana products in the original packaging to maintain labeling with the amount of THC (which is the psychoactive component of marijuana) to prevent accidental ingestion or over-ingestion.
- storage in locations that cannot be accessed by persons who are not able to use marijuana in a safe or legal manner.
- emergency response procedures for cases of actual or suspected accidental ingestion or over-ingestion.

Facilities may also want to consider facilitating discussions about the interactions of marijuana with other medications and obtaining liability insurance policies to cover any injuries that may occur while the employee or client is impaired.

**Local and State Laws.** Facilities that allow marijuana should ensure that their policies and procedures conform to local and state laws and regulations.

- Local requirements (which may be issued by the city or the county) may be more stringent than state law and each facility is encouraged to review the requirements for its jurisdiction.
- Selected state requirements for medical and retail marijuana regarding purchase, possession, cultivation, consumption, and impairment are summarized in the table below.

**STATE REQUIREMENTS FOR MEDICAL AND RETAIL MARIJUANA**  
*(Facilities should also review the local codes since they may be more stringent)*

	MEDICAL	RETAIL
<b>Purchase and Sale</b>		
Date consumers authorized to purchase?	June 1, 2001.	January 1, 2014.
Who can use marijuana?	A Colorado resident for whom a physician has diagnosed a debilitating medical condition and recommended that the patient might benefit from the medical use of marijuana. <sup>7</sup> If a registry patient, the resident will have a valid medical marijuana registry identification card, or a copy of their filed medical marijuana application if a new patient application was filed within the last 35 days.	Anyone age 21 or older. <sup>8</sup>
What are the different marijuana products	<ul style="list-style-type: none"> <li>- Marijuana intended to be smoked or vaporized.</li> <li>- Marijuana-infused products <u>not</u> intended to be smoked, such as tinctures, ointments, or edible products (including food, drink or pills) .</li> </ul>	Same as medical.
<b>Possession</b>		
How much is an individual allowed to possess?	<p>Up to 2 ounces. For quantities of marijuana in excess of these amounts, a patient or his or her primary caregiver may raise as an affirmative defense to charges of violation of state law that such greater amounts are medically necessary to address the patient's debilitating medical condition.<sup>9</sup></p> <p>Note: An individual can possess the total amounts allowed for both medical and retail marijuana.</p>	<p>Up to 1 ounce.<sup>10</sup></p> <p>Note: An individual can possess the total amounts allowed for both medical and retail marijuana.</p>
<b>Cultivation</b>		
How much can be grown for personal use?	A patient can grow up to 99 marijuana plants for personal use. <sup>11</sup>	An individual age 21 and older can grow up to 6 plants, with no more than 3 being mature at any one time. <sup>12</sup>
Where can it be grown?	It must be grown in a non-public location. <sup>13</sup>	It must be grown on private property in an enclosed and locked space that is not open to the public. <sup>14</sup>
<b>Consumption</b>		
Who can assist someone else with consumption?	Primary caregivers are authorized to assist medical marijuana patients in the medical use of marijuana. <sup>15</sup> A primary caregiver must be 18 years or older and have "significant responsibility" for managing the well being of the patient including being involved in basic or instrumental activities of daily living. Cultivating or transporting marijuana and advising a patient on which medical marijuana products to use and how to dose them is	Any individual who is age 21 or older can assist another who is age 21 or older. <sup>17</sup>

**STATE REQUIREMENTS FOR MEDICAL AND RETAIL MARIJUANA**  
*(Facilities should also review the local codes since they may be more stringent)*

	MEDICAL	RETAIL
	considered a “significant responsibility.” <sup>16</sup>	
Where can it be consumed?	<p>Marijuana cannot be consumed in plain view or in a place open to the public.<sup>18</sup> It cannot be used while in a vehicle, aircraft, or motorboat.<sup>19</sup> In addition, it cannot be used in a way that could endanger the health or well-being of any person.<sup>20</sup></p> <p>Other specific prohibitions:  <u>Smoking.</u> The Colorado Clean Indoor Air Act prohibits smoking in indoor areas with limited exceptions.<sup>21</sup> If smoked outdoors, it cannot occur within a radius of 15 feet of the front or main doorway leading into a facility.<sup>22</sup> (Note that local jurisdictions may apply stricter requirements to the radius requirements. Though marijuana can be smoked at the set radius from a main entrance, the ban on “plain view or in a place open to the public” remains in place.)</p>	<p>Marijuana cannot be consumed openly and publicly.<sup>23</sup> Use or open containers are not permitted in the passenger area of a car, although there are some exceptions.<sup>24</sup></p> <p>Other specific prohibitions: same as medical marijuana.</p>
<b>Intoxication</b>		
Operating under the influence	A person shall not undertake any task while under the influence of medical marijuana when doing so would constitute negligence or professional malpractice. <sup>25</sup> A person shall not operate, navigate, or be in actual physical control of any vehicle, aircraft, or motorboat while under the influence of medical marijuana. <sup>26</sup> A person shall not engage in the medical use of marijuana in a way that endangers the health and well-being of a person. <sup>27</sup>	Same as medical.
At what level is a person considered intoxicated?	For the purposes of a DUI or DWAI, a drug content of 5 nanograms or more of delta 9 THC per milliliter of blood is a permissible inference that the person is under the influence. <sup>28</sup>	Same as medical marijuana.

<sup>1</sup> Prohibition of cultivation, use or consumption of retail marijuana in group homes for the developmentally disabled: C.R.S. 25.5-10-214(5)(c)

<sup>2</sup> Employers are not required to accommodate the use of medical marijuana in any workplace: Colorado Constitution, Article 18, § 14(10)(b). Employers may set restrictions on retail marijuana use: Colorado Constitution, Article 18, §16(6)(a) & C.R.S. §12-43.4-104(5).

<sup>3</sup> Prohibition of open consumption, use or display of medical and retail marijuana is illegal: Medical - Colorado Constitution, Article 16, § 14(5)(a)(II), C.R.S. §25-1.5-106, (12)(b)(II); Colorado Constitution; Retail - Article 18 §16(3)(d); C.R.S. §18-18-406(5)(b).

<sup>4</sup> Todd Garvey and Charles Doyle, Marijuana: Medical and Retail – Selected Legal Issues. March 25, 2014. Congressional Research Services. pp.14-17.

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<sup>5</sup> Ibid., p 30.

<sup>6</sup> Note that persons who use medical marijuana are prohibited from undertaking any task while under the influence, when doing so would constitute negligence or professional malpractice: C.R.S. §25-1.5-106 (2)(b)(III).

<sup>7</sup> Who can use medical marijuana: Colorado Constitution, Article 18 §14(2).

<sup>8</sup> Age of persons who can purchase retail marijuana: Colorado Constitution, Article 18, § 16 (3).

<sup>9</sup> Amount of medical marijuana that an individual can possess: Colorado Constitution, Article 18, §14(4).

<sup>10</sup> Amount of retail marijuana that an individual can possess: Colorado Constitution, Article 18, §16(3)(a).

<sup>11</sup> Amount of medical marijuana plants cultivated for personal use: C.R.S. § 25-1.5-106(8.5)(b).

<sup>12</sup> Amount of retail marijuana plants cultivated for personal use: Colorado Constitution, Article 18, §16(3)(b).

<sup>13</sup> Where medical marijuana can be grown: Colorado Constitution, Article 18, §14(5)(a)(II).

<sup>14</sup> Where retail marijuana can be grown: Colorado Constitution, Article 18, §16(3)(b).

<sup>15</sup> Who can assist with the consumption of medical marijuana: Colorado Constitution, Article 18, §14(2)(b).

<sup>16</sup> Definitions of “primary caregiver” and “significant responsibility” for medical marijuana: C.R.S. §25-1.5-106 (2)

<sup>17</sup> Who can assist another with the consumption of retail marijuana: Colorado Constitution, Article 18, §16(3)(e).

<sup>18</sup> Where medical marijuana can be consumed: Colorado Constitution, Article 18, §14(5)(a)(II) and §25-1.5-106(12)(b)(III)..

<sup>19</sup> Prohibition of consumption of medical marijuana in a vehicle, aircraft, or motorboat: C.R.S. §25-1.5-106(12)(b)(V)(C).

<sup>20</sup> Where medical marijuana can be consumed: Colorado Constitution, Article 18, §14 (5)(a)(I) and §25-1.5-106(12)(b)(I).

<sup>21</sup> Smoking restrictions in indoor areas: C.R.S. §25-14-204. Exceptions to smoking restrictions in indoor areas: C.R.S. §25-14-205. The listing of exceptions includes *but is not limited to* private homes (unless used for child care), private vehicles (unless used for the public transportation of children, day care, or as part of health care transportation), outdoor areas of any business, and the areas of assisted living facilities and nursing homes that are designated for smoking for residents that are fully enclosed and ventilated and to which access is restricted to the residents or their guests.

<sup>22</sup> Smoking authorized within 15’ radius of entryway of facilities: C.R.S. §25-14-203(7)

<sup>23</sup> Consumption of retail marijuana: Colorado Constitution, Article 18, §16(3)(d).

<sup>24</sup> Prohibition of “open containers” of marijuana or use while driving: C.R.S. §42-4-1305.5(2)

<sup>25</sup> Prohibition of undertaking a task while under the influence of medical marijuana that would constitute negligence or professional malpractice: C.R.S. §25-1.5-106(12)(b)(III)

<sup>26</sup> Operation of vehicles, aircraft or motorboats while under the influence of medical marijuana: C.R.S. §25-1.5-106(12)(b)(VI).

<sup>27</sup> Engaging in the use of medical use of marijuana in a way that endangers the health and well-being of a person: C.R.S. §25-1.5-106(12)(b)(I).

<sup>28</sup> Marijuana intoxication for the purposes of DUI/DWAI: C.R.S. §18-3-205(2)(d).