



Implementing Amendment 2

Current Legal State of the State

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A Synopsis of Florida Medical Marijuana Law

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Chapter 2017-232, Laws of Florida Senate Bill 8A

- Senate Bill 8A:
 - Rewrites and replaces Florida's Compassionate Care Act, known as "Charlotte's Web."
 - The Office of Medical Marijuana Use replaces the Office of Compassionate Use.
 - Medical marijuana and marijuana delivery devices are exempt from sales tax.
 - Defines important terms.
 - Preempts local regulation of cultivation, processing, and delivery of medical marijuana.
 - Limits municipal regulation of medical marijuana dispensaries.
- This presentation will briefly review Senate Bill 8A. It is not intended to provide legal advice.

FLORIDA DEPARTMENT OF HEALTH

Office of Compassionate Use

Low-THC Cannabis & Medical Cannabis



Florida
HEALTH

Rick Scott, Governor of the State of Florida

Celeste Philip, MD, MPH, Surgeon General and Secretary

FloridaHealth.gov

4052 Bald Cypress Way, Tallahassee, Florida 32399-3265 • 850-245-4657

June 22, 2017

Patient Count: 19,494

Ordering Physician Count: 874

FLORIDA DEPARTMENT OF HEALTH

Office of Medical Marijuana Use

Low-THC Cannabis & Medical Marijuana



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July 27, 2017

Patient Count: 26,968
Ordering Physician Count: 948



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Office of Medical Marijuana Use

Welcome to the Department of Health Office of Medical Marijuana Use. The Office of Medical Marijuana Use is charged with writing and [implement the department's rules for medical marijuana](#), overseeing the statewide [Medical Marijuana Use Registry](#), and licensing Florida businesses to cultivate, process, and dispense medical marijuana to qualified patients.

Amendment 2, and the expanded qualifying medical conditions, became effective on January 3, 2017. The Florida Department of Health, physicians, dispensing organizations, and patients are bound by Article X Section 29 of the Florida Constitution and 381.986 Florida Statutes. The department is committed to moving as quickly as possible to ensure the health of Floridians and implement the new legislation.

It is the responsibility of the [qualified ordering physician](#) to follow Florida constitution and statute, diagnose patients and determine if medical marijuana is an appropriate treatment.

The department recommends speaking to your health care professional to determine if medical marijuana products are right for you or your loved one. [List of Physicians Who Have Completed the Required Training](#).

Medical marijuana is available in Florida, however, remains illegal under federal law.

Office of Medical Marijuana Use

☎ 850-245-4657 open weekdays, 8am-5pm (excluding state holidays)

✉ medicalmarijuanause@flhealth.gov

📍 **Mailing Address**
4052 Bald Cypress Way,
Tallahassee, FL 32399



Qualifying Medical Conditions

- Cancer.
- Epilepsy.
- Glaucoma.
- Positive status for human immunodeficiency virus.
- Acquired immune deficiency syndrome.
- Post-traumatic stress disorder.
- Amyotrophic lateral sclerosis.
- Crohn's disease.
- Parkinson's disease.
- Multiple sclerosis.
- Medical conditions of the same kind or class as or comparable to those enumerated above.
- A terminal condition diagnosed by a physician other than the qualified physician issuing the physician certification.
- Chronic nonmalignant pain.



Medical Marijuana Treatment Centers “MMTC”

- Art. X, § 29, Fla. Const., defines a Medical Marijuana Treatment Center (MMTC) to mean an entity, registered with the Department of Health that acquires, cultivates, possesses, processes, transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, or related supplies to qualifying patients or their caregivers. Accordingly, MMTCs may open and operate dispensing facilities, which are separate and apart from the cultivation, processing, and delivery operations.



Medical Marijuana Treatment Centers “MMTC”

- ▶ The approved medical marijuana treatment centers are:
 - ▶ 3 Boys Farm
 - ▶ Aphria (formerly CHT Medical)
 - ▶ GrowHealthy
 - ▶ Knox Medical
 - ▶ Loop's Nursery & Greenhouses
 - ▶ Modern Health Concepts
 - ▶ Plants of Ruskin, Inc.
 - ▶ Sunbulb Company, Inc.
 - ▶ Surterra Therapeutics
 - ▶ The Green Solution
 - ▶ Treadwell Nursery
 - ▶ Trulieve



Medical Marijuana Treatment Centers “MMTC”

- ▶ 16 MMTC dispensing locations currently listed by the Office of Medical Marijuana Use:
 - ▶ Clearwater
 - ▶ Edgewater
 - ▶ Gainesville
 - ▶ Jacksonville
 - ▶ Lady Lake
 - ▶ Miami
 - ▶ Orlando
 - ▶ Pensacola
 - ▶ St. Petersburg
 - ▶ Tallahassee
 - ▶ Tampa
- ▶ Medical marijuana products may be delivered statewide.



Medical Marijuana Treatment Centers “MMTC”

- Within 6 months after the registration of 100,000 active qualified patients in the medical marijuana use registry, the department shall four additional medical marijuana treatment centers.
- Thereafter, the department shall license four medical marijuana treatment centers within 6 months after the registration of each additional 100,000 active qualified patients in the medical marijuana use registry that meet the requirements of this section.
- A medical marijuana treatment center may not establish or operate more than a statewide maximum of 25 dispensing facilities.
 - Unless the medical marijuana use registry reaches a total of 100,000 active registered qualified patients. Then the statewide maximum number of dispensing facilities shall increase by 5, and 5 more for each additional 100,000 active registered qualified patients.
 - Dispensing facilities in each region shall be limited by population calculations.



Important Definitions: Medical Use

- ▶ “Medical use” means the acquisition, possession, use, delivery, transfer, or administration of marijuana authorized by a physician certification. **The term does not include:**
 - ▶ **Possession, use, or administration of marijuana that was not purchased or acquired from a medical marijuana treatment center.**
 - ▶ Possession, use, or administration of marijuana in a form for **smoking**, in the form of commercially produced food items other than edibles, or of marijuana seeds or flower, **except for flower in a sealed, tamper-proof receptacle for vaping.**
 - ▶ Use or administration of any form or amount of marijuana in a manner that is inconsistent with the qualified physician’s directions or physician certification.
 - ▶ **Transfer of marijuana to a person other than the qualified patient for whom it was authorized or the qualified patient’s caregiver on behalf of the qualified patient.**

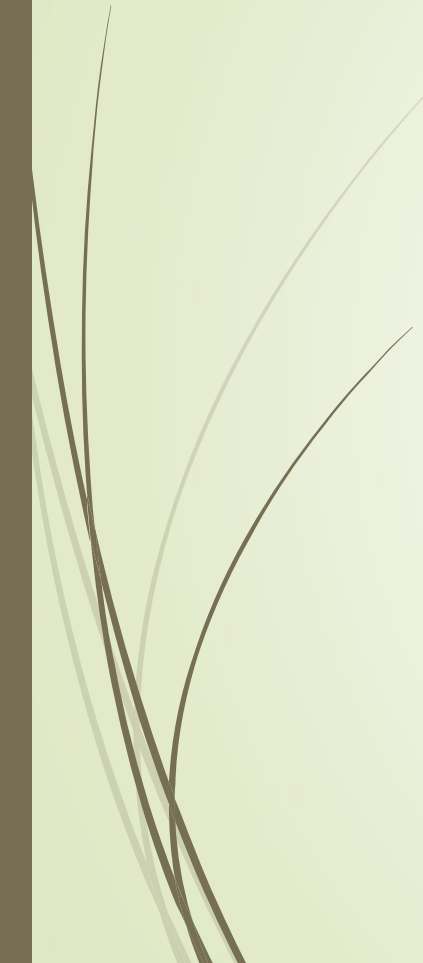


Important Definitions: Medical Use

- ▶ Medical Use does **not** include:
 - ▶ Use or administration of marijuana in the following locations:
 - ▶ On any form of public transportation, except for low-THC cannabis.
 - ▶ In any public place, except for low-THC cannabis.
 - ▶ In a qualified patient's place of employment, except when permitted by his or her employer.
 - ▶ In correctional institutions as defined by Florida law.
 - ▶ On the grounds of a preschool, primary school, or secondary school, except as provided pursuant to a properly enacted school policy regulating the administration of medical marijuana to students.
 - ▶ In a school bus, a vehicle, an aircraft, or a motorboat, except for low-THC cannabis.



Important Definitions

- ▶ **“Marijuana”** means all parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin, including low-THC cannabis, **which are dispensed from a medical marijuana treatment center for medical use by a qualified patient.**
 - ▶ **“Marijuana delivery device”** means an object used, intended for use, or designed for use in preparing, storing, ingesting, inhaling, or otherwise introducing marijuana into the human body, and **which is dispensed from a medical marijuana treatment center for medical use by a qualified patient.**
 - ▶ **“Low-THC cannabis”** means a plant of the genus Cannabis, the dried flowers of which contain 0.8 percent or less of tetrahydrocannabinol and more than 10 percent of cannabidiol weight for weight; the seeds thereof; the resin extracted from any part of such plant; or any compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds or resin **that is dispensed from a medical marijuana treatment center.**
- 



Important Definitions

- ▶ “Caregiver” means a resident of this state who has agreed to assist with a qualified patient’s medical use of marijuana, has a caregiver identification card, and meets the requirements of (this statute).
- ▶ “Close relative” means a spouse, parent, sibling, grandparent, child, or grandchild, whether related by whole or half blood, by marriage, or by adoption.
- ▶ “Smoking” means burning or igniting a substance and inhaling the smoke.
- ▶ “Edibles” means commercially produced food items made with marijuana oil, but no other form of marijuana, that are produced and dispensed by a medical marijuana treatment center.
- ▶ “Qualified patient” means a **resident** of this state who has been added to the medical marijuana use registry by a qualified physician to receive marijuana or a marijuana delivery device for a medical use and who has a qualified patient identification card.



Resident for Purposes of Medical Marijuana Patient Certification

- ▶ The Department of Health shall determine whether an individual is a resident. This can be done with:
 - ▶ A valid Florida Driver's License or Identification Card.
 - ▶ Seasonal residents may qualify if they can show proof of residence as required by the statute and the Department of Health.
- ▶ "Seasonal resident" means:
 - ▶ A person who temporarily resides in Florida for a period of at least 31 consecutive days in each calendar year;
 - ▶ Maintains a temporary residence in this state;
 - ▶ Returns to the state or jurisdiction of his or her residence at least one time during each calendar year; and,
 - ▶ Is registered to vote or pays income tax in another state or jurisdiction.



Medical Marijuana Identification Cards and Use Registry

- ▶ Law Enforcement shall have access to the Medical Marijuana Registry.
- ▶ Registry information is **CONFIDENTIAL and is not a public record.**
- ▶ Patients may only have one active physician certification at a time.
- ▶ The registry contains:
 - ▶ The physician certification;
 - ▶ The patient's qualifying condition;
 - ▶ Daily dosage amounts;
 - ▶ The amount and forms of marijuana authorized for the patient; and,
 - ▶ Any type of marijuana delivery devices needed by the patient for the medical use of marijuana.
- ▶ The registry must be updated within 7 days after any change is made to the original physician certification.



Medical Marijuana Identification Cards and Use Registry

- ▶ A Medical Marijuana Treatment Center may not **dispense** more than a 70-day supply of marijuana to a qualified patient or caregiver.
- ▶ A qualified patient and the qualified patient's caregiver may purchase from a medical marijuana treatment center for the patient's medical use a marijuana delivery device.
- ▶ **All marijuana purchased must remain in its original packaging.**
- ▶ No waiting period:
 - ▶ Once added to the registry, a patient may receive medical marijuana products provided they also apply for a medical marijuana identification card and are otherwise approved.



Medical Marijuana Identification Cards and Use Registry

- The department shall immediately suspend the registration of a qualified patient charged with a violation of Chapter 893 until final disposition of any alleged offense. Thereafter, the department may extend the suspension, revoke the registration, or reinstate the registration.
- The department may revoke the registration of a qualified patient or caregiver who cultivates marijuana or who acquires, possesses, or delivers marijuana from any person or entity other than a medical marijuana treatment center.



Medical Marijuana: Municipal Issues

- ▶ Chapter 2017-232, Laws of Florida, **expressly preempts** the regulation of cultivation, processing, and delivery of marijuana by MMTCs to the state.
- ▶ Municipalities, by ordinance, **may** determine the criteria for the location of, and other permitting requirements, of dispensaries, **provided those regulations do not conflict with state law or Department of Health rule.**
- ▶ **Municipalities may, by ordinance, ban medical marijuana dispensaries within their jurisdictions.**
- ▶ Dispensing facilities must still comply with the Florida Building Code, the Florida Fire Prevention Code, or any local amendments to the Florida Building Code or the Florida Fire Prevention Code.



Medical Marijuana: Municipal Issues

- A municipality that permits dispensing facilities:
 - May not place specific limits, by ordinance, on the number of dispensing facilities located within the municipality; and,
 - **May not enact ordinances for permitting or for determining the location of dispensing facilities which are more restrictive than its ordinances permitting or determining the locations for pharmacies;**
- A municipality may not charge a MMTC a license or permit fee in an amount greater than the fee charged by such municipality to pharmacies.
- A dispensing facility may not be located within five hundred (500) feet of the real property that comprises a public or private elementary school, middle school, or secondary school unless the municipality approves the location through a formal proceeding open to the public.



Medical Marijuana: Municipal Issues

- To ensure the security of dispensing facilities, MMTCs must:
 - Maintain a fully operational security alarm system that secures all entry points and perimeter windows and is equipped with motion detectors; pressure switches; and duress, panic, and hold-up alarms;
 - Maintain a video surveillance system that records continuously 24 hours a day in controlled areas and all entrances and exits to the premises:
 - Video surveillance recordings must be retained for at least 45 days.
 - Videos may be retained longer upon the request of a law enforcement agency.
 - Ensure that the dispensing facilities have sufficient outdoor lighting from dusk until dawn;
 - Ensure that the indoor premises where dispensing occurs includes a waiting area with sufficient space and seating to accommodate qualified patients and caregivers and at least one private consultation area that is isolated from the waiting area and area where dispensing occurs;
 - Not display products or dispense marijuana or marijuana delivery devices in the waiting area;



Medical Marijuana: Municipal Issues

- ▶ To ensure the security of dispensing facilities, MMTCs must:
 - ▶ **Not dispense from its premises, marijuana or a marijuana delivery devices between the hours of 9 p.m. and 7 a.m.**, but may perform all other operations and deliver marijuana to qualified patients 24 hours a day;
 - ▶ Store marijuana in a secured, locked room or a vault;
 - ▶ Require at least two of its employees, or two employees of a security agency with whom it contracts, to be on the premises at all times where cultivation, processing, or storing of marijuana occurs;
 - ▶ Require each employee or contractor to wear a photo identification badge at all times while on the premises.
 - ▶ Report to local law enforcement within 24 hours after the medical marijuana treatment center is notified or becomes aware of the theft, diversion, or loss of marijuana.



Medical Marijuana: Municipal Issues

- ▶ A medical marijuana treatment center may not engage in advertising that is visible to members of the public from any street, sidewalk, park, or other public place, except:
 - ▶ The dispensing location of a medical marijuana treatment center may have a sign that is affixed to the outside or hanging in the window of the premises which identifies the dispensary by the licensee's business name, a department-approved trade name, or a department-approved logo.
- ▶ Department of Health approved Internet advertising is permitted.
- ▶ Prices for medical marijuana and marijuana delivery devices must be on the MMTC dispensary website.



Medical Marijuana: Municipal Issues

- ▶ If the Department of Health has probable cause to believe that a person or entity that is not registered or licensed with the department has violated state statute or any rule adopted pursuant to this section, the Department of Health may issue and deliver a notice to cease and desist from such violation.
- ▶ For the purpose of enforcing a cease and desist order, the Department of Health may file a proceeding in the name of the state seeking issuance of an injunction or a writ of mandamus against any person or entity who violates any provisions of such order.
- ▶ The Department of Health may seek civil penalties of between \$5,000 and \$10,000 in addition to other remedies.
- ▶ Unlicensed activity will be referred to local law enforcement for determination of criminal violations.



Medical Marijuana: Municipal Issues

- ▶ In addition to the other remedies:
 - ▶ The Department of Health; or
 - ▶ The State Attorney
- ▶ May bring an action for an injunction to restrain any unlicensed activity or to enjoin the future operation or maintenance of the unlicensed activity or the performance of any service in violation of this section.

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Florida League of Cities

Center for Municipal Research & Innovation – August 16, 2017

Medical Marijuana from the Municipal Employer's Perspective



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WEISS SEROTA HELFMAN
COLE & BIERMAN

At the Crossroads of Business & Government

Overview

- National Trends
- Overview of Public Sector Drug Testing
- Relevant Federal and State Laws
- Status of Medical Marijuana Law in Florida
- Impact of Amendment 2 on FL employers
- Employer Options
- Conclusions

Public Sector Drug Testing

- Drug testing of public employees constitutes a “search” that falls within the purview of the 4th Amendment to the U.S. Constitution.
- Generally need reasonable suspicion to conduct public employee drug testing.

Public Sector Drug Testing

- Suspicion-less testing (i.e., pre-employment or random) is generally only authorized if employer can establish “special need” to test that outweighs an employee’s privacy interest.
- Special need generally exists for suspicion-less testing of safety sensitive personnel.

Relevant Laws

- Federal Controlled Substances Act (CSA)
 - What are Schedule 1 Controlled Substances?
 - What is impact of being classified as Schedule 1 Controlled Substance?

Relevant Laws

- Americans with Disabilities Act (ADA)
 - Applies to “Qualified Individuals with a Disability”
 - Defines “illegal use of drugs”

Relevant Laws

- Federal Drug Free Workplace Act
 - Applies to Federal Contractors
 - Requires entities to keep workplaces free of illegal drugs as defined by CSA

Relevant Laws

- Florida Drug Free Workplace Act
 - Voluntary
 - Workers' Compensation Premium Credit
 - Drug Testing Required

Medical Marijuana in FL

- What are the limitations of Article X, Section 29 of Florida Constitution?
 - Not allow for violation of any law other than for conduct in compliance with Amendment.
 - No impact on non-medical use, possession, production or sale of marijuana.
 - No one other than qualifying patient authorized to use medical marijuana.
 - Illegal to operate vehicle, aircraft, train or boat while under influence.

Medical Marijuana in FL

- What are the limitations of Article X, Section 29 of Florida Constitution (continued)?
 - Amendment does not give immunity under federal law.
 - Amendment does not require accommodation of on-site medical use of marijuana at place of employment.
 - Amendment does not require health insurance providers to reimburse persons for expenses related to medical marijuana.

Impact of Medical Marijuana on FL Employers

- No case law yet in Florida.
- Various potential issues, many of which have been addressed elsewhere.



Impact of Medical Marijuana on FL Employers

- Will ADA require FL employers to allow medical marijuana as reasonable accommodation for employees with a disability?
- What does state marijuana law say about employer duty to accommodate?

Impact of Medical Marijuana on FL Employers

- What if state law specifies that there is no duty to accommodate?
- *Emerald Steel Fabricators, Inc. v. Bureau of Labor and Industries*, 230 P.3d 518 (Ore. 2010).

Impact of Medical Marijuana on FL Employers

- What if state law specifies that there **is** a duty to accommodate?
(NY, Arizona, Minnesota, Illinois)
 - These states have language in their marijuana laws that provide that an employer may be liable under state law when they fail to accommodate lawful medical marijuana use.
 - May provide state-based, non-ADA avenue for relief.
 - *Barbuto v. Advantage Sales and Marketing, LLC* (Mass. Supreme Judicial Court; July 17, 2017).

Impact of Medical Marijuana on FL Employers

- What if state marijuana law is silent on duty to accommodate? (i.e., Florida)
 - *Ross v. Ragingwire Telecommun., Inc.*, 174 P.3d 200 (Cal. 2008)
 - *Roe v. TeleTech Customer Care Mgmt, LLC*, 216 P.3d 1055 (Wash. App. 2009)

Impact of Medical Marijuana on FL Employers

- Do state marijuana laws preclude employer right to discipline employees for otherwise lawful marijuana use? So far, NO!
 - *Coates v. Dish Network, LLC*, 303 P.3d 147 (Colo. Ct. App. 2013)
 - *Casias v. Wal-Mart Stores, Inc.*, 695 F.3d 428 (6th Cir. 2012)
 - *Johnson v. Columbia Falls Aluminum Co.*, 2009 WL 865308 (Mont. 2009)

Impact of Medical Marijuana on FL Employers

- Medical Marijuana and the FMLA
 - Most “debilitating conditions” are “serious health conditions.”
 - What if employee takes medical leave and uses lawfully prescribed medical marijuana while on leave and then fails drug test upon return to work?
 - Can employer discipline? If so, is employer liable?

Impact of Medical Marijuana on FL Employers

- Medical Marijuana and FL Drug-Free Workplace Act
 - Act requires testing and may require discipline.
 - How will the Act treat lawful use of medical marijuana.

Options for FL Employers

- So what should Florida employers do once regulations are adopted and licenses issued later this year?
- Answer depends largely on how much risk employers are willing to assume.

Options for FL Employers

- Option 1 – maintain zero tolerance
 - Legally relatively safe option.
 - Make sure MRO notified.



**HUGS
NOT
DRUGS**

Options for FL Employers

- Option 2 – allow employees to use lawfully prescribed medical marijuana.
 - Revise policy; put out memo
 - Address limitations/requirements
 - Notice.
 - When and Where?
 - Safety sensitive positions.



Conclusions

- Amendment 2 not require employers to allow employees to use lawfully prescribed medical marijuana.
- Likely will be the case unless/until marijuana reclassified under CSA.
- Employers not required to test and may allow it.

QUESTIONS?



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