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# Medical



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## Legal and regulatory considerations

*Abstract: Nearly half of the United States has legalized medical marijuana. Advanced practice registered nurses (APRNs) in six states can authorize patients for medical marijuana use. Knowledge of legal and regulatory aspects of medical marijuana laws will protect an APRN's license and the public.*

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**A**lthough still illegal under federal law, medical marijuana, also called medical cannabis, is now legal in 23 states, the District of Columbia, and Guam for therapeutic purposes. The medical marijuana landscape is rapidly changing with nearly half of these state laws having passed within the last 5 years.<sup>1</sup> In six of these states—Maine, Minnesota, New Hampshire, New Mexico, Vermont, and Washington—advanced practice registered nurses (APRNs) may authorize, sometimes referred to as certify or recommend, qualifying patients to participate in medical marijuana programs (see *APRNs who can authorize medical marijuana*). The Massachusetts Nurse Practice Act allows certified nurse practitioners (NPs) to issue medical marijuana certifications; however, this cannot be implemented until the state's medical marijuana program makes additional changes.<sup>2</sup> New York's medical marijuana law allows the Department of Health Commissioner to allow NPs to authorize patients; however, this is not included in the initial rules.<sup>3,4</sup>

To protect the public's health and the APRNs' licenses, APRNs practicing in states that allow them to authorize qualifying patients for medical marijuana use have a responsibility to understand the

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legal and regulatory implications of these laws. APRNs practicing in other states may wish to consider the implications of future legislation that could allow them to authorize qualifying patients for medical marijuana use. This article provides an overview of federal and state medical marijuana laws. Provisions of Washington State's law, the second state to include APRNs as authorizing providers for medical marijuana patients, are examined to illustrate legal and regulatory considerations.

**Federal law, marijuana research, and drug development**

Under federal law, marijuana is a Schedule I controlled substance, making it illegal to prescribe or dispense. Schedule I drugs are considered to have a high potential for abuse, no accepted medical use in the United States, and a lack of accepted safety.<sup>5</sup> According to the Office of National Drug Control Policy, the federal government's position is that marijuana should undergo the rigorous clinical trials and scientific scrutiny the FDA requires of all new medications.<sup>6</sup>

Although marijuana is illegal under federal law, the U.S. Department of Justice (DOJ) issued guidance in August 2013 on marijuana enforcement. The memorandum established eight marijuana enforcement priorities, including prevention of distribution to minors and sales that serve as

a cover for drug trafficking or cartels. The guidance discourages the prosecution of nonviolent users of marijuana and indicated the DOJ will not interfere in states with regulation and enforcement of marijuana-related activities that protect the public's safety.<sup>7</sup>

Research regarding the therapeutic benefits of marijuana is difficult to conduct in the United States. Federal regulations and clinical research with marijuana involve application to two or more federal agencies. The National Institute on Drug Abuse (NIDA) controls the supply of marijuana for research purposes. NIDA contracts with the University of Mississippi to grow marijuana that is harvested and stored before being made into cigarettes or other forms of marijuana for research.<sup>8</sup> The Drug Enforcement Administration must provide registration to the researcher and licensure of the study site. Application to conduct a study must be made to the FDA if clinical research for an investigational new drug is proposed by a researcher.<sup>8</sup> NIDA itself sponsors research on the potential therapeutic benefits of marijuana with 28 active projects in six different categories.<sup>9</sup>

Although marijuana derived from the plant itself is a schedule I controlled substance, the FDA has approved two synthetic forms of marijuana, dronabinol (Marinol) and nabilone (Cesamet). Both received initial approval in 1985 after undergoing the FDA's rigorous approval process to

**APRNs who can authorize medical marijuana**

State and relevant statute(s)	Nurse practitioner	Nurse midwife	Nurse anesthetist	Clinical nurse specialist
<b>Maine</b> <a href="http://www.maine.gov/dhhs/dlrs/mmm/">http://www.maine.gov/dhhs/dlrs/mmm/</a>	X			
<b>Minnesota</b> <a href="https://www.revisor.mn.gov/statutes/?id=148.171">https://www.revisor.mn.gov/statutes/?id=148.171</a>	X	X	X	X
<b>New Hampshire</b> <a href="http://www.gencourt.state.nh.us/rsa/html/XXX/326-B/326-B-18.htm">www.gencourt.state.nh.us/rsa/html/XXX/326-B/326-B-18.htm</a>	X	X	X	X
<b>New Mexico</b> <a href="https://www.ncsbn.org/New_Mexico_Nursing_Practice_Act.pdf">https://www.ncsbn.org/New_Mexico_Nursing_Practice_Act.pdf</a> <a href="http://archive.nmhealth.org/phd/midwife/NMAC-16-11-2.pdf">http://archive.nmhealth.org/phd/midwife/NMAC-16-11-2.pdf</a>	X	X	X	X
<b>Vermont</b> Includes APRNs licensed under substantially equivalent provisions in New Hampshire, Massachusetts, and New York: <a href="http://legislature.vermont.gov/statutes/section/26/028/01611">http://legislature.vermont.gov/statutes/section/26/028/01611</a> <a href="http://vcic.vermont.gov/marijuana_registry/physicians">http://vcic.vermont.gov/marijuana_registry/physicians</a>	X	X	X	CNS in psychiatric and mental health nursing
<b>Washington</b> <a href="http://app.leg.wa.gov/WAC/default.aspx?cite=246-840-302">http://app.leg.wa.gov/WAC/default.aspx?cite=246-840-302</a>	X	X	X	

assure they were safe and effective. They can be legally prescribed as controlled substances in all states.<sup>10</sup> Dronabinol, a synthetic delta-9-tetrahydrocannabinol compound, is a Schedule III medication used to treat nausea and vomiting associated with chemotherapy and loss of appetite associated with AIDS. Nabilone, a synthetic cannabinoid, is a Schedule II medication used for chemotherapy-induced nausea and vomiting when a patient fails to respond to other antiemetics.<sup>11</sup>

### ■ State laws

Though medical marijuana laws in the 23 states, District of Columbia, and Guam vary widely, they have some common elements. APRNs who choose to authorize medical marijuana are strongly urged to read the law and regulations and the nurse practice acts in their state. (See *Key aspects of medical marijuana laws for states in which APRNs can authorize for patients.*) The National Council of State Legislatures provides links to the legislation for each state at [www.ncsl.org/research/health/state-medical-marijuana-laws.aspx#1](http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx#1). The National Council of State Boards of Nursing provides information on how to contact each state's nursing board at <https://www.ncsbn.org/47.htm>. Several key aspects of the laws follow.

### ■ Rules for implementation

Legislation often requires rules for implementation. Passage of a law to allow medical marijuana may take one or more years to implement. For example, New Hampshire's governor signed House Bill 573 into law on July 23, 2013. Registry rules adopted in July 2014 were not effective until August 1, 2015, and an additional rule making is ongoing.<sup>12</sup>

### ■ Authorizing practitioners

Each state defines which healthcare providers may authorize a qualifying patient to use medical marijuana. There may be limitations in some states. In New Mexico, for example, the diagnosis of glaucoma must be made by an ophthalmologist or optometrist.<sup>13</sup> APRNs must also ensure that authorizing a patient as having a qualifying condition is within their scope of practice. A psychiatric mental health NP would not, for example, be certified to provide care to a patient with epilepsy.

### ■ Provider-patient relationship requirement

Each state law stipulates what constitutes a provider-patient relationship. Vermont's law specifies that a "bonafide health care professional-patient relationship" must exist.<sup>14</sup> This

relationship is defined as a treating or consulting relationship of not less than 6 months duration. New Hampshire requires a 3-month medical relationship between a licensed provider and patient (unless an exemption applies) "during which the provider has conducted a full assessment of the patient's medical history and current medical condition..."<sup>15</sup> New Mexico stipulates that certification must occur "within an established patient-provider relationship that includes a current assessment of the applicant's debilitating medical conditions..." and that certifications "in the absence of a clinical visit are unacceptable."<sup>13</sup>

### ■ Qualifying conditions

Each state determines which medical conditions qualify a patient for medical marijuana use. Typically, the conditions must be terminal or debilitating and/or unrelieved by standard treatment and medication. Conditions commonly include cancer, HIV infection, AIDS, glaucoma, and intractable

*APRNs who choose to authorize medical marijuana are urged to read the law and the nurse practice acts in their state.*



pain. Examples of uncommon qualifying conditions include nail-patella syndrome and agitation of Alzheimer disease in Maine.<sup>16</sup> Illinois places Tourette syndrome, lupus erythematosus, Tarlov cysts, and neurofibromatosis on its list of qualifying conditions.<sup>17</sup>

### ■ Permitted forms of marijuana

Medical marijuana may be delivered in a variety of methods that include smoking, vaporization, ingestion of marijuana-infused edibles, and hash oils. Minnesota and New York are the only two states that specifically prohibit smoking as a delivery method.<sup>3,18</sup> Minnesota stipulates medical cannabis "means any species of the genus cannabis plant, or any mixture or preparation of them, including whole plant extracts and resins, and is delivered in the form of: liquid, including but not limited to, oil; pill; vaporized delivery method with use of liquid or oil but which does not require the use of dried leaves or plant form; or any other method, excluding smoking, approved by the commissioner."<sup>18</sup>

### ■ Patient registries and ID cards

A patient registry and/or ID card is used primarily to allow verification that the individual is a medical marijuana patient.<sup>1</sup> Being on a registry or having an ID card is not mandatory in all states. Both California and Maine have

**Key aspects of medical marijuana laws for states in which APRNs can authorize for patients**

State and program website	Statutory language	Provider-patient relationship criteria	Patient registry or ID cards
<b>Maine</b> www.maine.gov/ dhhs/dlrs/mmm/	Question 2 (1999) LD 611 (2002) Question 5 (2009) LD 1811 (2010) LD 1296 (2011) LD 1739 (2014)	Bonafide physician-patient relationship as indicated by evidence of an evaluation, treatment plan, periodic review, and documentation	Yes Voluntary No fee
<b>Minnesota</b> www.health.state. mn.us/topics/ cannabis/	SF 2470 (2014) Chapter 311	Has primary responsibility for care and treatment of the person for the qualifying medical condition for which the person is diagnosed	Yes \$200 fee reduced to \$50 in some situations
<b>New Hampshire</b> www.dhhs.state. nh.us/oos/tcp/	HB 573 (2013)	At least a 3-month medical relationship between a licensed provider and a patient that includes an in-person exam, a history, a diagnosis, and a treatment plan appropriate for the licensee's medical specialty unless onset was <3 months	Yes Fee to be determined with \$50 renewal each year
<b>New Mexico</b> http://nmhealth.org/ about/mcp/svcs/	SB 523 (2007)	Provider may not certify a patient related within the second degree of consanguinity or the first degree of affinity, including a spouse, child, stepchild, parent, step parent, sibling, grandparent, mother-in-law, father-in-law, son-in-law, or daughter-in-law of the patient.	Yes No Fee
<b>Vermont</b> http://vcic.vermont. gov/marijuana_ registry	SB 76 (2004) SB 7 (2007) SB 17 (2011)	Bona fide healthcare professional-patient relationship treating or consulting for not <6 months and a complete history and physical assessment is completed unless certain circumstances apply Except for naturopaths, individuals professionally licensed under substantially equivalent provisions in New Hampshire, Massachusetts, or New York may provide verification of conditions	Yes \$50
<b>Washington</b> www.doh.wa.gov/ YouandYour Family/Marijuana/ MedicalMarijuana	Initiative 692 (1998) SB 5798 (2010) SB 5073 (2011) Chapter 69.51A RCW SB 5052 (2015)	Have a documented relationship with patient as a principal care provider or specialist, relating to the diagnosis and ongoing treatment or monitoring of the patient's terminal or debilitating condition	Yes in 2016 (referred to as a database) voluntary \$1

Allows dispensaries	Specifies conditions	Out-of-state cards accepted	Restrictions on marijuana products
Yes	Yes	Yes	No
Yes	Yes	No	<ul style="list-style-type: none"> <li>• Liquid</li> <li>• Pill</li> <li>• Vaporized delivery method with use of liquid or oil</li> <li>• Any other method excluding smoking approved by commissioner of health</li> </ul>
Yes	Yes Department may include a medical condition not listed on a case-by-case basis based upon written request of a provider who furnishes written certification to department	Yes for possession only; cannot be used to obtain cannabis in the state	No
Yes	Yes with some special requirements <ul style="list-style-type: none"> <li>• Painful peripheral neuropathy – requires inclusion of medical records that provide objective evidence</li> <li>• Post-traumatic stress disorder requires diagnosis by psychiatrist, psychiatric NP, or prescribing psychologist</li> <li>• Glaucoma requires diagnosis by ophthalmologist or optometrist</li> <li>• Severe chronic pain requires two certifications</li> <li>• Inflammatory autoimmune-mediated arthritis certification by board-certified rheumatologist</li> </ul>	No	No
Yes	Yes	No	No
No	Yes	No	No Recreational Marijuana allowed

voluntary programs to issue ID cards to qualified patients and enter them into a registry.<sup>16,19</sup> Washington is the only state currently without a registry; however, a voluntary database will be implemented in 2016.<sup>20</sup>

### ■ Washington State law

Washington was one of the first states to legalize medical marijuana.<sup>1</sup> In 1998, Washington voters passed Initiative 692, the Medical Marijuana Act, which allowed physicians to authorize medical marijuana use for qualifying patients with valid documentation. In 2007, legislation required the Washington Department of Health to develop rules to define the law's provision to allow a patient to have a 60-day supply of marijuana.<sup>21</sup>

In 2010, the Washington state legislature expanded the number of healthcare professional groups that can authorize medical marijuana use for patients.<sup>22</sup> Advanced registered nurse practitioners (ARNPs), the title used in Washington for APRNs, were included among these groups. Senate Bill 5073 that passed in 2011 contained an important section that added requirements for a healthcare professional who provides

and professional discipline when advising a patient about the risks and benefits of medical marijuana use or if a patient may benefit from medical marijuana. Also protected are activities related to providing care to a patient seeking a medical marijuana authorization.

### Qualifying patients and conditions

The law defines a qualifying patient as one who has been diagnosed by a healthcare professional as having a qualifying terminal or debilitating medical condition, is a resident of the state of Washington at the time of the diagnosis, has been advised of the risks and benefits of medical marijuana, and has been advised by the healthcare professional that medical use of marijuana may provide a benefit.

Qualifying medical conditions that must be terminal or debilitating conditions include cancer, HIV infection, multiple sclerosis, epilepsy, other seizure disorders, and spasticity disorders. Terminal or debilitating conditions that qualify when they are unrelieved by standard treatments and medications are: intractable pain; glaucoma (acute or chronic with increased intraocular pressure); Crohn disease with debilitating symptoms; hepatitis C with debilitating nausea or intractable pain; and diseases (including anorexia) that result in nausea, vomiting, wasting, appetite loss, cramping, seizures, muscle spasms, or spasticity. Posttraumatic stress disorder and traumatic brain injury were added in the 2015 law. Also added in



*Each state defines which healthcare providers may authorize a qualifying patient to use medical marijuana.*

documentation to a qualifying patient to examine a patient, document the debilitating or terminal condition, inform patients of other options to treat the condition, and document other measures used to treat the condition.<sup>23</sup> The medical marijuana law remains valid even though a Washington State ballot measure passed in 2012 legalized recreational marijuana.<sup>24</sup> The laws differ in a variety of ways, including the amount that can be possessed and the tax imposed.

Title 69, Chapter 69.51A RCW Medical Marijuana, which can be accessed at [apps.leg.wa.gov/RCW/default.aspx?cite=69.51A&full=true](http://apps.leg.wa.gov/RCW/default.aspx?cite=69.51A&full=true), and Second Substitute Senate Bill 5052 signed into law in 2015 are the basis of the following sections.<sup>20</sup> Only the main aspects of Washington's law that pertain ARNPs are described.

### Authorized healthcare professionals

Under Washington state statute, healthcare professionals licensed to authorize medical marijuana include medical physicians, osteopathic physicians, naturopathic physicians, ARNPs, physician assistants, and osteopathic physician assistants. Only these healthcare professionals are protected from state criminal sanction, civil consequences or liability,

2015 is the requirement a qualifying condition must be severe enough to significantly interfere with the patient's activities of daily living and function.

### Requirements to authorize a patient for medical marijuana use

To authorize medical marijuana, the healthcare professional must have an established or newly initiated relationship with the patient as the primary care provider or specialist for the ongoing treatment or monitoring of the terminal or debilitating condition. The healthcare professional must complete an appropriate physical examination, document the terminal or debilitating medical condition, document that the patient may benefit from treatment with medical marijuana, inform the patient of other options for treating the terminal or debilitating medical condition, and document other measures attempted to treat the terminal or debilitating medical condition not involving medical marijuana. The 2015 law mandates patient examinations and reexaminations must be performed in person. The explicit requirement for a parent or guardian to agree to a minor's use of medical marijuana is included in the 2015 law.

The requirement a healthcare professional's practice cannot exist solely to authorize medical marijuana changed in 2015 to not existing primarily to authorize medical marijuana. A healthcare professional who authorizes medical use of marijuana cannot have an economic relationship with an enterprise that produces, processes, or sells marijuana products. The health professional also cannot sell or provide (at no charge) marijuana concentrates, marijuana-infused products, or useable marijuana to a qualifying patient or designated provider. The healthcare professional, however, may sell or donate topical, noningestible products with a THC concentration of less than 0.3% to qualifying patients.

#### Valid documentation for medical marijuana

Authorizations prior to July 24, 2015 were written and signed on tamper-resistant paper stating, in the healthcare professional's opinion, this patient may benefit from the medical use of cannabis. Beginning July 24, 2015, a form developed by the Department of Health (DOH) must be completed, printed on tamper-resistant paper, and signed for all new authorization. Beginning July 1, 2016, all authorizations must be on the DOH form. The patient may not use a medical record in place of a written authorization. Until July 24, 2015, an expiration date for the authorization was not required, although a healthcare professional could impose one. Now, for a qualifying patient age 18 or older, an authorization expires 1 year after issuance. Qualifying patients younger than age 18 will receive an authorization for only 6 months. Patients must be re-examined to receive another authorization.

#### Washington State Nurse Practice Act and disciplinary action

ARNPs in Washington state must meet the standards of care required by the nurse practice act for patients seeking or using a medical marijuana authorization. ARNPs authorizing medical marijuana must comply with the requirements of RCW 69.51A and their scope of practice in the nurse practice act.<sup>25</sup> If an ARNP fails to uphold the standards of care, disciplinary action may be taken against the ARNP's license. The Washington State 2015 law also includes a provision requiring a healthcare professional to provide access to or produce documents and records when requested by the disciplining authority to confirm adherence to the law.

One 2013 Washington state case in which an ARNP did not follow the law resulted in voluntary surrender of the ARNP's license. The ARNP failed to appropriately conduct a history, examine, diagnose, and review documentation of children purported to have a qualifying condition. The ARNP also failed to document other measures taken to treat

the children's purported terminal or debilitating condition. Information on this case is included in disciplinary notices on the Department of Health website ([www.doh.wa.gov/Newsroom/2013NewsReleases.aspx](http://www.doh.wa.gov/Newsroom/2013NewsReleases.aspx)).

#### Limitations of the Washington State law

ARNPs in Washington are not required by the medical marijuana law to authorize medical marijuana use for patients. Employers, including those of nurses, are not required to make accommodations for the medical use of marijuana and may establish drug-free work policies. The Nurse Practice Act's rules clearly indicate a nurse may be subject to disciplinary action for impairment by drugs or alcohol: "Practicing nursing while affected by alcohol or drugs, or by a mental, physical, or emotional condition to the extent that there is an undue risk that he or she, as a nurse, would cause harm to him or herself or other persons."<sup>26</sup>

The law specifies care for a patient seeking a medical marijuana authorization is not a mandated health insurance benefit. RNs and LPNs are not protected to provide advice to a patient about the risks and benefits of the use of medical marijuana. They may not administer medical marijuana because it is not a prescribed medication.<sup>27</sup>

#### ■ Moving forward

The number of states that allow APRNs to recommend patients for medical marijuana is increasing. APRNs in these states have a responsibility to practice within the provisions of the laws and regulations. Other APRNs may benefit from understanding medical marijuana laws should a change in scope of practice allow them to authorize medical marijuana for patients. By understanding laws and regulations, APRNs will be well prepared to decide whether to incorporate medical marijuana authorization for qualifying patients into their practice; to practice wisely; and know how to protect the public and their licenses. **NP**

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