



An Overview of Texas' Low-THC Medical Cannabis Program

On June 1, 2015, Gov. Greg Abbot signed SB 339 into law. Known as the Texas Compassionate Use Act, it is intended to allow some qualifying patients to access “low-THC cannabis,” marijuana that contains 10% or more cannabidiol (“CBD”) and not more than 0.5% tetrahydrocannabinol (“THC”). The legislation allows regulated businesses known as “dispensing organizations” to cultivate, process, and distribute low-THC cannabis to certain patients.

Unlike other states with similar laws establishing limited access to CBD-based medical marijuana products, the Texas law requires that qualified doctors join a physician registry and include information in the registry itself such as the dosage recommendations, means of administration, and the total amount of low-THC cannabis required to fill the patient's prescription. If issued, the prescription would also order a licensed marijuana establishment to distribute cannabis to the patient. In several respects, the Texas law attempts to mimic the prescription system put in place by federal authorities.

How do patients qualify for the program?

A physician may prescribe low-THC cannabis to patients under certain conditions. The patient must be a permanent resident of the state, diagnosed with intractable epilepsy. In addition, the physician is required to have provided two or more different treatments approved by the United States Food and Drug Administration (“FDA”) that did not alleviate the patient's seizures. Finally, no other FDA-approved treatment options may be available or appropriate for the patient.

How does a physician qualify to prescribe low-THC cannabis?

A physician may prescribe low-THC cannabis under the Texas law if he or she is licensed to make such prescriptions, dedicates a significant portion of his or her clinical practice to the evaluation and treatment of epilepsy, and is certified by the American Board of Psychiatry and Neurology in epilepsy or neurology. The physician must determine that the benefit a patient would receive is greater than the risk he or she faces by consuming low-THC cannabis.

What medical conditions are included?

Intractable epilepsy is the only condition that qualifies. Intractable epilepsy is defined as a seizure disorder in which the patient's seizures have been treated by two or more appropriately chosen and maximally titrated antiepileptic drugs that have failed to control the seizures.

What protections do patients have?

Individuals who receive a prescription would be protected from the application of criminal law for having marijuana in their possession, if it meets the definition of low-THC cannabis.

How much medical marijuana can patients possess?

The amount of low-THC cannabis a patient may possess is determined by the physician's prescription.

Can patients grow their own medical marijuana?

No. Only state-regulated dispensing organizations may cultivate marijuana.

Can patients have a caregiver pick up their medicine for them?

No. No person other than the patient for whom a prescription was issued and his or her legal guardian has protections from criminal law prohibiting possession of low-THC cannabis.

Can patients under the age of 18 participate?

Yes. In order to qualify, a second physician, also qualified to prescribe low-THC cannabis, must concur that the benefit the patient would receive would outweigh the risk to the patient.

How much will medical marijuana cost?

Prices will be set by individual medical marijuana dispensing organizations.

How will dispensing organizations operate?

Dispensing organizations will cultivate marijuana plants, process them, and distribute low-THC cannabis directly to patients. They must be registered with the Department of Public Safety and will be subject to inspections by the agency, along with testing requirements for low-THC cannabis.

When would the law be implemented?

The law went into effect immediately when it was signed by the governor. However, the Department of Public Safety will have until December 1, 2015, to adopt rules. Businesses will likely not be licensed until September 1, 2017, as specified in the bill.

Does the state program recognize patients from other states?

No. Only patients who are permanent residents may qualify for a prescription.

Are there restrictions on where a patient can possess or consume medical marijuana?

No, none are specified in the language of the law.

Will the bill provide a workable system for Texans?

Probably not as currently written. Several states with similar laws also require physicians to “prescribe” cannabis to patients, and such requirements place physicians at risk due to federal law. A prescription is an order by a doctor to a patient to consume a controlled substance, and for a pharmacy (here a dispensary) to distribute it. Cannabis in all forms is a Schedule I substance, and the DEA has previously threatened physicians with the loss of their license should they prescribe any other controlled substance and has indicated it would consider such an order aiding and abetting a federal offense. By contrast, federal courts have recognized doctors have legal protections under the First Amendment to “recommend” the use of marijuana. The bill sponsors indicated they preferred the “prescription” model. To work, the state law would have to be amended, federal law would have to change, or physicians would have to be willing to take the risk of prescribing a Schedule I substance.