

Arizona Medical Marijuana Act - The Basic Facts

By: [Susan E. Wells, Esq.](#)

The passage of the Arizona Medical Marijuana Act (A.R.S. § 36-2801, *et seq.*) (the "AZMM Act") has generated a lot of controversy. That's not surprising, considering that the AZMM Act was passed by a margin of only 4,340 votes (out of 1,678,356 votes cast), and only passed after the early and provisional ballots were counted.

The AZMM Act's supporters and detractors have continued the debate, as the first draft of the rules implementing the AZMM Act issued by the Arizona Department of Health Services (the "Department") generated more than 1,500 comments. The Department is expected to issue revised draft rules on January 31, 2011, followed by an additional opportunity to comment, as well as public hearings. The final rules are expected to be published on March 28, 2011, for implementation in April 2011.

The following is a summary of the Act, in plain English (or as close to plain English as is possible, without eliminating necessary detail):

Who Can Possess Marijuana?

- **Qualifying patients** who have registered with the Department and have been issued registry identification cards
 - A person who has been diagnosed by a physician (an Arizona-licensed M.D., D.O., N.D. or N.M.D. M.D. (H)) as having a debilitating medical condition. Debilitating medical conditions include:
 - Cancer, glaucoma, HIV positive, AIDS, Hepatitis C, ALS (amyotrophic lateral sclerosis, also known as Lou Gehrig's Disease), Crohn's Disease and agitation of Alzheimer's Disease
 - A chronic or debilitating disease or medical condition, or its treatment, that produces cachexia (wasting syndrome), severe and chronic pain, severe nausea, seizures (including epilepsy) or severe and persistent muscle spasms (including multiple sclerosis)

To apply for a registry identification card, the qualifying patient must submit to the Department a written certification issued, within the prior 90 days, by his physician in the course of a physician-patient relationship after the physician has completed a full assessment of the qualifying patient's medical history. The physician's certification must:

- Identify the debilitating medical condition
- State that, in the physician's professional opinion, the qualifying patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the qualifying patient's debilitating condition or symptoms associated with the debilitating medical condition
- Be signed and dated by the physician

In addition, the qualifying patient must submit a signed certification that he will not divert medical marijuana to anyone who is not permitted to possess medical marijuana.

Under the present version of the draft rules, the application fee for a qualifying patient is \$150.

- **Designated caregivers** who have registered with the Department and have been issued registry identification cards
 - Must be 21 years old
 - Must agree to assist a qualifying patient with his medical use of marijuana
 - May not have been convicted of an excludable felony

Each qualifying patient designates his designated caregivers his application. The designated caregiver may be a designated caregiver for up to five qualifying patients. The designated caregiver must submit a set of fingerprints and a signed certification that he agrees to be the qualifying patient's designated caregiver and not to divert medical marijuana to anyone who is not permitted to possess medical marijuana.

Under the present version of the draft rules, the application fee for a designated caregiver is \$200.

- **Nonprofit^[1] Medical Marijuana Dispensaries** - not-for-profit individual or entity that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, supplies, sells or dispenses marijuana (or related supplies and educational materials) to qualifying patients, designated caregivers and dispensary agents

The number of nonprofit medical marijuana dispensaries ("dispensaries") will be limited to one per 10 registered pharmacies operating in Arizona (except that there must be one dispensary in each county).

A dispensary may apply to the Department for a registration certificate by submitting:

- The legal name of the dispensary
- The physical address of the dispensary and, if applicable, the physical address of the separate location at which the dispensary's medical marijuana will be grown^[2]
- The name, address and date of birth of each dispensary agent, including principal officers and board members^[3]
- A sworn statement certifying that the dispensary is in compliance with applicable city, town and county zoning restrictions
- Operating procedures consistent with the Department's rules for oversight of the dispensary, including security and record-keeping measures

Under the present version of the draft rules, the application fee for a dispensary is \$5,000. The fee is nonrefundable, regardless of whether the applicant is issued a registration certificate.

Dispensaries will be exempt from the payment of state income taxes.

Dispensaries may acquire usable medical marijuana or medical marijuana plants from a registered qualifying patient or a registered designated caregiver only if the qualifying patient or the designated caregiver receives no compensation for the marijuana.

- **Dispensary Agents**

- Principal, officer, director, employee or volunteer of a dispensary
- Must be at least 21 years old
- Must not have been convicted of an excludable felony

To apply for a registry identification card for a dispensary agent, the dispensary must submit to the Department for the dispensary agent a set of fingerprints and a signed certification that he agrees not to divert medical marijuana to anyone who is not permitted to possess medical marijuana.

Under the present version of the draft rules, the application fee for a dispensary agent is \$200.

How much marijuana can a qualifying patient or a designated caregiver possess?

- A qualifying patient may possess 2-½ ounces of usable marijuana and, if the individual is authorized to grow marijuana^[4], 12 marijuana plants.
- A designated caregiver may possess, for each qualifying patient, 2-½ ounces of usable marijuana and, if the individual is authorized to grow marijuana, 12 marijuana plants.

Who Can Receive Money for Providing Medical Marijuana?

- A dispensary may receive payment for all expenses incurred in its operation.
- A designated caregiver may not receive a fee or other compensation (other than reimbursement of actual costs) for his service as a caregiver and can only receive reimbursement of his actual costs for assisting a qualifying patient's medical use of marijuana.

Are there any places within Arizona that you cannot use or possess medical marijuana?

- At any preschool, primary or secondary school
- On a school bus
- In any correctional facility

In addition, medical marijuana cannot be smoked on public transportation or in any other public place and cannot be consumed on the premises of a nonprofit medical marijuana dispensary.

Adult care facilities (such as assisted living centers and nursing homes) may adopt *reasonable* restrictions on the use of medical marijuana by the people they serve. These restrictions may include a non-smoking policy, designated places to consume medical marijuana and refusals to obtain, store or maintain a qualifying patient's medical marijuana supply. However, an adult care facility may not *unreasonably* limit a qualifying patient's access to, or use of, medical marijuana, unless it may lose a monetary or licensing-related benefit under federal laws or regulations.

Are there other restrictions on a qualifying patient's use of medical marijuana?

The AZMM Act also does not shield any person from criminal, civil or other penalties for negligence, professional malpractice or operating a motor vehicle, plane or boat while under the influence of medical marijuana. However, the presence of metabolites or components of marijuana that appear in insufficient concentration to cause impairment will not, in and of itself, mean that a qualifying patient is under the influence of marijuana.

The Department's rules cannot modify the AZMM Act. However, the rules may address the application and registration procedures, the operation of dispensaries (provided that no undue burdens are imposed upon dispensaries) and how the Department will add conditions and treatments to the list of debilitating medical conditions under the AZMM Act. Again, the Department is expected to issue revised draft rules on January 31, 2011. They will be accessible on the Department's website, which is www.azdhs.gov/prop203/, and a summary will be available at www.jaburgwilk.com/attorneys/susan-e-wells.aspx.

[1] Although the dispensary need not be a tax-exempt entity for federal income tax purposes and it appears that the dispensary need not be not-for-profit corporation under Arizona law, the entity must have Bylaws that contain provisions that restrict the revenue and receipts in a manner that would be consistent with its nonprofit character.

[2] Neither the dispensary nor the cultivation site may be located within 500 feet of a public or private school in existence at the time of the application. Each city, town and county may have additional requirements and restrictions.

[3] No principal officer or board member may have served as a principal officer or board member of a dispensary that has had its registration certificate revoked.

[4] If no dispensary is operating within 25 miles of the qualifying patient's home, the individual will be permitted to grow his own medical marijuana or appoint a designated caregiver to grow it for him.

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