

MEDICAL MARIJUANA ACT: ACTIVITIES TO DATE

Background

The Montana Medical Marijuana Act has seen significant changes in the past year. In November 2016, voters approved Initiative 182, loosening some of the restrictions that were created by the 2011 Legislature. The 2017 Legislature then approved Senate Bill 333, which fleshed out some of the regulatory aspects, allowed for chemical manufacturing of marijuana concentrates, and created a tax on gross sales. This briefing paper summarizes activity related to the Montana Medical Marijuana Act since the Legislature adjourned in April 2017.

Cardholder and Provider Requirements

Both registered cardholders using medical marijuana and the providers growing or manufacturing it were affected by the changes made by the initiative and SB 333. Among other things:

- businesses and individuals that grow, manufacture, sell, or test marijuana or marijuana-infused products must be licensed, and licensees may have employees;
- the per-patient plant and usable marijuana limits for providers will be replaced by a square-footage amount;
- the Department of Public Health and Human Services (DPHHS) must establish a system to track plants and usable marijuana from start to sale;
- providers may operate dispensaries and apply for endorsements for chemical manufacturing;
- independent testing laboratories are allowed;
- cardholders who don't name a provider will be allowed to possess the amount of usable marijuana allowed by DPHHS rule, rather than the amount that was previously set in law; and
 - registry identification cards for cardholders must contain a photo and be able to track purchases by April 2018.

Administrative Rules

DPHHS adopted emergency rules in July to clarify the allowable amounts of usable marijuana that a cardholder can possess until new limits are adopted by future rules; to allow temporary licensing of testing laboratories until final rules are adopted; and to allow the department to issue temporary endorsements for chemical manufacturing until it adopts final rules. In October, it adopted those emergency rules as temporary rules until additional rules are in place.

On Nov. 9, the agency proposed rules to fully implement I-182 and SB 333. The proposed rules drew a wide range of public comment at a public hearing in November.

Among other things, the proposed rules would:

- allow a cardholder who has not named a provider to possess 1 ounce of usable marijuana, the same amount as allowed under current law;
- allow providers to have a canopy of 50 square feet of marijuana plants for every cardholder for whom they are growing marijuana, with a square foot measured horizontally starting from the outermost point of the mature flowering plant located at the farthest outside edge of a growing space;
- establish licensing requirements for providers, dispensaries, and testing labs;
- require licensees to use the inventory tracking system selected by DPHHS;
- require tracking of any plants that reach a height of 12 inches until the plant or marijuana it produces is sold;
- establish health, safety, and security requirements for premises at which marijuana is grown, manufactured, stored, and sold;
- establish labeling requirements for all products, including an indication of whether the product has been tested, the ingredients it contains, the type of extraction method and solvents used in processing the product if applicable, the amount suggested for use, and a variety of warnings about use;
- establish packaging requirements;
- require testing for cannabinoid levels, moisture content, certain microorganisms, heavy metals, solvents, and pesticides;
- establish requirements for transportation of marijuana and marijuana products; for disposal of marijuana waste, failed test samples and lots, and waste products generated by production and processing; and for recall of products considered to pose a health or safety risk; and
- require licensees to comply with all DPHHS inspections.

At the November public hearing, speakers raised a number of concerns over some aspects of the proposals. Oft-repeated concerns included the proposal to prevent anyone with a drug offense from working for a provider or lab, the requirement to pay for a permit for each employee a licensee hires, the number of required laboratory tests and their associated costs, the number of labeling requirements, and the overall costs of complying with the rules, using the tracking system, and paying yearly licensing fees.

Tracking System

DPHHS initially indicated that it would solicit bids through a Request for Proposal to contract with a vendor that could provide the “seed-to-sale” tracking system required under SB 333. However, the agency instead has entered into an acquisition agreement for using the Marijuana Enforcement Tracking Regulation and Compliance system (Metrc). The system would be used for both the tracking system and for licensing purposes. State policy allows agencies to enter into information technology pilot projects for limited periods of time in order to test how well a potential IT system will work out for the purposes needed.

In November, DPHHS estimated the first-year implementation costs at \$600,000 for the tracking system and \$250,000 for the licensing system.

Metrc was developed by Franwell, a Florida-based company. The system “was specifically designed for government agencies in charge of legalized marijuana enforcement,” according to the Metrc website, which lists as its customers programs in Alaska, Colorado, Maryland, Michigan, Nevada, Ohio, and Oregon.

Licensing and Registration Fees

I-182 set licensing fees for providers at up to \$1,000 a year for providers with 10 or fewer patients, \$5,000 a year for providers with more than 10 patients, and \$1,200 a year for testing laboratories. SB 333 changed the testing lab fee so that it's set in rule. The bill also required that DPHHS adopt rules for fees for dispensary licenses and chemical manufacturing endorsements.

DPHHS has not collected any licensing fees to date because it is not licensing providers until it adopts rules. Instead, it is continuing to register providers as allowed under the pre-initiative law and charging the \$50 annual registration fee that was in effect before the initiative passed.

The proposed rules contained the following annual fees for applications:

- \$2,000 for a testing laboratory license;
- \$500 for a dispensary license;
- \$500 for a chemical manufacturing endorsement; and
- \$50 per employee for an employee permit.

The rules would allow providers who also operate as marijuana-infused products provider to obtain a combined license for a fee of \$1,000 if they have 10 or fewer cardholders or \$5,000 if they have more than 10 cardholders.

The rules also would increase the cardholder fees. The fee for a registry identification card for a patient would increase from the current \$5 to \$30 a year, and cardholders would pay a \$10 fee to change providers.

DPHHS estimates the fees will raise about \$2.33 million, or about \$2.2 million more than the current fees bring in. The estimate is based on:

- licensing:
 - 387 providers with 10 or fewer cardholders;
 - 222 providers with more than 10 cardholders;
 - 100 dispensaries; and
 - four testing laboratories;
- issuing:
 - 20,000 registry identification cards;
 - 1,400 employee permits; and
 - 137 chemical manufacturing endorsements; and
- handling 4,000 requests to change registry identification cards.

Taxation of Gross Sales

SB 333 imposed a tax on the gross sales of marijuana and marijuana-infused products sold by licensed providers. The tax is 4% during the current fiscal year and will decrease to 2% on July 1, 2018. The tax must be paid every three months. The requirement went into effect on July 1, 2017, and the first quarterly payments were due on Oct. 15.

As of Nov. 15, the Department of Revenue had collected \$395,251 in first-quarter taxes from 434 providers, or about 71% of the registered providers. Most of the providers paid the tax through their bank accounts; about \$58,000 was paid in cash. The tax payments represented gross sales of between \$9.5 million and \$10 million during the three-month period.

Before collecting the new tax, the department notified all registered providers by mail about the changes in the law and developed a set of frequently asked questions to help providers determine how to document their sales and prices and how to calculate their taxes. Providers are to track all sales of marijuana and infused products, including the purchaser of the product, the date, quantity, and type of sale, and the price established for the product, before any discounts were offered.

Registry Statistics

The number of cardholders, providers, and physicians participating in the medical marijuana program has increased since passage of I-182. The table below shows these numbers at four different points in time:

- October 2016, the month before passage of the initiative;
- December 2016, the month after passage of the initiative;
- May 2017, the month after the 2017 Legislature adjourned; and
- December 2017, the most recent month for which statistics are available.

Category	October 2016	December 2016	May 2017	December 2017
Cardholders	7,785	8,215	15,563	22,177
Providers	522	536	615	
Physicians	172	174	205	225
Testing Laboratories	Not applicable	Not applicable	Not applicable	4
Chemical Manufacturers	Not applicable	Not applicable	Not applicable	172

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Sources:

- E-mails from Erica Johnston, Manager, Business Services Branch, Department of Public Health and Human Services, Oct. 24 and Nov. 2, 2017.
- E-mails from Mary Ann Dunwell, Public Information Officer, Department of Revenue, Oct. 26 and Dec. 7, 2017.
- Testimony of Lee Baerlocher, Department of Revenue Business and Income Taxes Division Administrator, to the Revenue and Transportation Interim Committee, Sept. 13, 2017.
- Medical Marijuana Program registry statistics compiled by the Department of Public Health and Human Services.
- Draft rules pertaining to the Montana medical marijuana program, submitted by DPHHS to the Secretary of State's Office on Oct. 30, 2017.
- Metrc website, available at www.metrc.com, accessed Nov. 2, 2017.