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EXPLAINER

How Medicinal Cannabis Programs are Changing: A Policy Perspective

April 2023

As policymakers consider implementing or modifying state medicinal cannabis programs, they should consider existing evidence, what additional research is necessary, the benefits of medical programs to patients and the impact of policy changes on patients.

Introduction

As of February 2023, 37 states and the District of Columbia have legalized medicinal cannabis use. The specifics of each state's medical cannabis program vary, and many states continue to modify their medicinal cannabis programs. These policy changes can have significant impacts on patients who use cannabis to control medical symptoms. As policymakers consider implementing or modifying state medicinal cannabis programs, they should consider existing evidence, what additional research is necessary, the benefits of medical programs to patients and the impact of policy changes on patients.

Which medical conditions have the strongest evidence supporting medical cannabis use?

According to a 2017 report by the National Academies of Science, Engineering, and Medicine (NASEM), there is strong evidence that supports the use of medical cannabis to treat chronic pain, muscle spasticity associated with multiple sclerosis, and chemotherapy-related nausea and vomiting. The report assessed the clinical evidence for a number of other conditions and concluded that more research is needed to determine the effectiveness of cannabis for these conditions. Since the publication of the NASEM report, many studies have reported positive results for other medical conditions; however, systematic reviews generally conclude that existing evidence is inadequate to draw conclusions about effectiveness for most conditions, cannabidiol (CBD) for Dravet Syndrome being one notable exception.

What elements of medicinal cannabis treatment need further exploration?

In addition to determining which conditions medicinal cannabis treatment assists, medical providers and patients would benefit from the development of baseline treatment protocols. Although providers may deviate from the standard of care in some situations, having a defined starting place for treatment is helpful. For cannabis, defining the most effective dosing schedules, consumption pathways and the ratios of cannabinoids—most often the ratio of delta-9-tetrahydrocannabinol (THC) to CBD—for specific conditions would help medical providers advise patients. Additionally, cannabis contains more than 550 chemical compounds, including phytocannabinoids and terpenes. Additional research is needed to determine if and how these compounds effect health.

What makes understanding the medical effects of cannabis difficult?

Conducting biomedical research on medicinal cannabis use is challenging for several reasons. Among the most complicating are that cannabis can be consumed by many different routes (e.g. ingested, inhaled, applied topically) and that researchers cannot source cannabis for their studies from the products available from state-authorized dispensaries. To the first point, the way the body processes cannabis is different depending on the way it is consumed. On the second point, because of cannabis' federal status as a Schedule I drug, researchers must obtain cannabis for studies from a federally approved source, of which there is only one, which cannot be expected to produce the wide range of cannabis strains and products available to consumers.

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Additional Topics of Interest

- Chemical, inorganic, fungal and microbial contaminants are regulated by state cannabis laws; however, **there is vast variation in the types and acceptable levels of contaminants.**
- Given the potentially immune-compromised state of medicinal cannabis patients, **there may be a need to improve the regulation of contaminants.**
- Another topic that is important for medical cannabis patient access is state reciprocity. Not all states accept or recognize out-of-state medical cannabis cards, which can complicate travel for patients who depend on cannabis to manage their symptoms. **As states build or revise their medicinal cannabis programs, considering state reciprocity should be part of their deliberations.** Nevertheless, since cannabis is federally illegal, state reciprocity cannot fully mitigate the risk of traveling across state lines with medical cannabis.

Contact us

For more information, please contact:

Chelsea Boyd
Research Fellow
Integrated Harm Reduction
cboyd@rstreet.org
www.rstreet.org

What are some regulatory and policy trends related to medicinal cannabis?

Changing Guidelines for Physicians Recommending Medicinal Cannabis:

To access medicinal cannabis, a patient must, at a minimum, receive a recommendation from a physician and apply to the state. The word "recommendation" is important because physicians cannot write a prescription for cannabis due to its federal status as a Schedule I drug. However, legislation passed in Colorado in 2021 changed the information a physician is required to submit to the state—an alteration which some physicians say has blurred the line between a "recommendation" and a prescription. The updated requirements include a maximum THC potency level, a recommended product, the patient's daily authorized purchase quantity (if it is above the state purchasing limit) and directions for use. This has made some physicians uncomfortable with continuing to recommend medicinal cannabis for patients seeking a medical card from the state.

THC Potency Caps:

Some states are beginning to propose laws that limit the proportion of THC in a cannabis product or flower. Florida's cannabis regulatory authority announced a rule in 2022 that limits the amount of THC (in milligrams) that patients can purchase. West Virginia has also considered a rule that would cap THC in medicinal cannabis products at 10 percent. In 2021, Colorado legislators discussed imposing a 10-15 percent potency cap on medicinal cannabis, but the provision did not pass. When Mississippi legalized medicinal cannabis, they also imposed a 30 percent potency cap on flower and a 60 percent cap on concentrates, oils and tinctures. Oklahoma lawmakers have introduced legislation that would impose similar potency caps for consideration during the 2023 legislative session.

Changes to Purchasing Limits:

Purchasing limits vary by state and product type. Studies suggest that medicinal cannabis users use cannabis more often and in larger quantities than recreational users. Adequately high purchasing limits are important for functional medical markets because accessing a dispensary regularly can be challenging for people with chronic illnesses. Pennsylvania and the District of Columbia have all recently increased the amount of cannabis patients can purchase. Meanwhile, Colorado decreased the amount of cannabis concentrate patients can purchase daily and Florida set supply limits.

Regulations Related to Local Preemption:

Many state laws allow local jurisdictions the power to ban or otherwise regulate cannabis businesses within their borders. For medicinal cannabis patients, many of whom are chronically ill, this can mean traveling longer distances to obtain their cannabis supply. One example of legislation passed to prevent local preemption is California SB 1186, which was signed into law in 2022. SB 1186 prevents localities from banning delivery of medicinal cannabis to patients or primary caregivers. The premise of the bill, deemed the Medicinal Cannabis Patients' Right of Access Act, is intended to ensure more consistent access to medicinal cannabis for patients across the state.