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## MARIJUANA FAQS

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### OVERVIEW

Marijuana use and possession, both recreational and medical, is now legal in Oregon. It remains a violation of federal law, although not aggressively enforced unless the particular use or possession falls into an area of federal enforcement priority. The 9<sup>th</sup> Circuit just ruled that federal money cannot be spent prosecuting medical marijuana use if that use is in compliance with state law.

With legalization comes questions regarding resident and employee marijuana use in the long term care sector. Are long term care communities and in-home care providers required to allow marijuana use by their staff or residents? Can employers still maintain a zero drug tolerance policy? This document addresses these and other questions you may be facing as marijuana presents itself at your community or in the homes of your in-home care clients.

### QUESTIONS

#### **What's the difference between Oregon's medical marijuana program and legalized recreational use?**

Legalized medical marijuana came first, passed by the people in 1998. Recreational marijuana only became legalized in July 2015. While the programs have similarities, there are several relevant differences. An individual may obtain a medical marijuana card allowing medical use at the age of 18, as opposed to recreational marijuana which is only legal at 21. Medical marijuana currently is not taxed whereas sales of recreational marijuana are taxed at a base rate of 17%. Allowed possession also differs.

#### **How much marijuana may individuals in Oregon lawfully possess?**

*Medical marijuana:* six or fewer mature marijuana plants and possession of no more than 24 ounces of usable marijuana.

*Recreational marijuana:* Up to four plants per residence out of the public view and possession of up to eight ounces of usable marijuana in the home and one ounce of usable marijuana outside the home.

**Because it is legalized are long term care communities and in-home care agencies required to allow marijuana possession and use on our premises or in our client's homes?**

No. Marijuana use and possession is allowed but is not a right. For more on this, see the question below on the Americans with Disability Act.

**I run an independent living facility. Does that make a difference regarding whether I must allow it on my premises?**

No. Oregon marijuana law does not affect existing landlord/tenant laws.

**If I elect to allow marijuana use at my community, what are some general guidelines I should consider?**

Be sure to:

- Prepare a separate agreement for marijuana use with specific policies/procedure for marijuana use, including your right to prohibit marijuana if usage is a danger to the resident or others.
- Notify prospective residents and family of your policy:
  - Some residents will not want to be around marijuana.
  - Others may want to use it but then find it is not allowed.
  - Ensure family are accepting of marijuana use by their loved one, if applicable.
- Don't allow caregivers to purchase and/or deliver marijuana to residents.
- Ensure you have a secure storage system for marijuana to avoid diversion by staff or other residents.
- Check your theft insurance; is this covered?
- Ensure your care providers are trained on how to identify and manage a bad outcome and, if you allow caregiver administration, how to administer marijuana.
- Remember these restrictions:
  - Marijuana may not be used in a public place. "Public place" means a place to which the general public has access. This certainly includes your lobby, dining area, and any other communal space. Also, remember that smoking or vaping is limited by the Indoor Clean Air Act.
  - Recreational marijuana may not be used by people under the age of 21. Be sure that if you are allowing family members to bring marijuana into your facility in an edible form, such as baked goods or candy, that the marijuana is not available in public areas where children may access it.
  - You cannot allow smoking of marijuana indoors in the same way as you cannot allow smoking of cigarettes.

**What specifically should I consider if a resident wants to use marijuana?**

Be sure to:

- Do an assessment to determine if marijuana use is safe for the resident and document your findings.

- Include use instructions, including amount and form, in the resident's service plan.
- Ensure there are no adverse reactions with other medications the resident is taking, including opioids.
- Be sure family knows about it and accepts it.
- Be sure the resident's attending physician knows the resident is using marijuana and ask him/her about any restrictions or potential bad outcomes you need to be aware of.
- Ask where the resident will be obtaining the marijuana; will you allow staff to deliver it?
- If the resident indicates he/she has a medical marijuana card, ask to see the card and keep a copy of it.
- Determine if the roommate, as applicable, is comfortable with the marijuana.

### **What questions should I ask a resident who wants to use marijuana?**

- Do they have a marijuana card?
- Do they have an order from their physician clearly stating how much/how often/in what form?
- Who is their designated primary caregiver?
- Where/how are they getting the marijuana?
- Are they also on opioids?
  - If so, be sure physician is engaged and approves of marijuana use.
- In what form are they using it?
- What is their plan for administration?
- Where will they use it; in their room?

### **Can I offer marijuana therapeutically?**

Yes. Just be sure you have taken the steps described in the questions above.

### **Am I legally liable if I allow improper use of marijuana on my premises?**

Likely no. The law regulates behavior of individuals and does not require businesses to monitor and enforce that behavior. But, remember that you are always responsible for the health and safety of your residents. If improper marijuana use by a resident or employee causes harm to a resident, you will be held accountable.

### **Am I liable if a resident has a bad outcome from marijuana use?**

Likely yes as the resident is under your care. This means you must train staff in how to manage those outcomes. Avoiding administering marijuana may limit this liability somewhat.

### **Should I allow staff to administer marijuana?**

If possible and safe, it is best to have family administer marijuana, both to limit liability for clinical bad outcomes based on the concentration or other factors associated with the marijuana and to ensure families are okay with their loved ones using marijuana. Sometimes, however, this is not possible. If your caregivers are administering marijuana, be sure they are properly trained in administration and in

identifying bad reactions. Also be sure your caregivers are not purchasing or delivering marijuana to residents. Any marijuana used by a resident should be selected by them or a family member.

**Can we have a zero drug tolerance policy?**

Yes. Just because marijuana is legal does not mean you must allow it. As marijuana use becomes more mainstream, however, be aware of limitations it may place on your pool of available applicants.

**Does the ADA require that we accommodate medical marijuana usage by our employees on our premises?**

No. The ADA is federal law and does not require accommodating of activity that is a violation of federal law, as marijuana use currently is. If an employee is using medical marijuana, however, be mindful of the underlying condition the employee is treating. Make sure that condition does not require other accommodation.

**Can we still drug test our employees?**

Yes. Legalization of marijuana in Oregon expressly does not change existing employment laws, including drug testing.

**Can I prohibit off-duty use?**

The law in this area is not settled so such a prohibition would be risky. Consider treating marijuana use as you would alcohol; okay on personal time but cannot affect job performance.

**BEST PRACTICES REGARDING EMPLOYEES**

- Develop a policy regarding allowed use.
  - Allow medical use in client home?
  - What about medical use?
- Update your employee handbook clarifying your stance on employee marijuana use.
- Be clear in the employee handbook what is prohibited:
  - Zero tolerance?
  - Medical use allowed?
- Disseminate the handbook to employees and obtain signatures on the new version to acknowledge that employees understand and accept the marijuana policy.
- Do staff training on:
  - Your community's or in-home care agency's policy regarding marijuana use by residents and employees
  - Clinical training regarding administration and identifying bad outcomes, as applicable
- Continue any existing drug testing practices, assuming they are in compliance with the law.

If you have further questions about marijuana use in your communities or in-home care agencies, please contact Gwen Dayton, OHCA general counsel and executive VP, at 503-726-5229 or [gdayton@ohca.com](mailto:gdayton@ohca.com).