

# Medical Marijuana in Florida

A Law Enforcement Reference Guide

*November 2020*

*Florida Department of Law Enforcement*



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## About the Reference Guide

In 2017, the Florida Legislature directed FDLE to create medical marijuana training for law enforcement agencies. This Reference Guide was the first step. It summarizes the sections of medical marijuana statutes most relevant for law enforcement. It also includes law enforcement procedures and criminal penalties. As statutes, rules, and case law evolve, staff will continuously update the content.

## Terminology

We've condensed a great deal of material, organized it, and simplified language for training purposes. For exact language, go to the original documents listed under References.

We've also shortened some terms to make the Guide easier to read.

Term used in the Florida Statutes	as it appears in the Reference Guide
physician certification	certification
marijuana delivery device	delivery device
qualified patient	patient
qualified physician	physician
medical marijuana testing laboratory	testing lab
medical marijuana treatment center	treatment center
medical marijuana use registry	use registry
medical marijuana use registry identification card	use registry ID card

## Terms to Know

**Cannabidiol (CBD):** a cannabinoid that has potential medical benefits but is not psychoactive and can actually counteract the psychoactive effects of THC.

**Cannabinoid:** any of the chemical compounds in the cannabis plant that affect the body's endocannabinoid system, including the central nervous system and the immune system. Some cannabinoids are psychoactive (acting on the brain and changing mood or consciousness); some are not.

**Cannabis:** the dried leaves and flowers (buds) of the *Cannabis sativa* or *Cannabis indica* plant. Cannabis contains active chemicals containing compounds called cannabinoids. Medical cannabis use is permitted to treat the symptoms of disease or the side effects of treatment, such as nausea and vomiting, pain, seizures, and loss of appetite.

**Caregiver:** a Florida resident who has agreed to assist with a patient's medical use of marijuana, has a use registry ID card, and meets the statutory requirements to qualify for the position. This person is also called a *legal representative* in prior documentation from the Office of Medical Marijuana Use.

**Chronic nonmalignant pain:** pain that is caused by a qualifying medical condition or that originates and persists from a qualifying medical condition.

**Close relative:** a spouse, parent, sibling, grandparent, child, or grandchild, whether related by whole or half blood, by marriage, or by adoption.

**Dispensary:** a retail location, owned and operated by an approved treatment center, where patients and caregivers can purchase medical marijuana and delivery devices.

**Edibles:** commercially produced food items made with marijuana oil, but no other forms of marijuana, that are produced and dispensed by a treatment center.

**Low-THC cannabis:** a plant of the genus *Cannabis*, the dried flowers (buds) of which contain 0.8 percent or less of tetrahydrocannabinol (THC) and more than 10 percent of cannabidiol (CBD) weight for weight; the seeds, resin, or any compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds or resin that is dispensed from a treatment center.

**Marijuana Delivery Device:** an object for preparing, storing, ingesting, inhaling, or otherwise introducing marijuana into the body, and which may be dispensed from a treatment center or a vendor for medical use by a patient.

**Medical marijuana:** any processed product of a plant of the genus *Cannabis*, to include any compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin, including low-THC cannabis that is dispensed from a treatment center. Florida law makes a distinction between cannabis and marijuana for the purposes of ch. 893, F.S., illegal substance violations.

**Medical Marijuana Testing laboratory:** a DOH-certified facility that collects and analyzes marijuana samples from a treatment center.

**Medical Marijuana Treatment Center:** any entity that holds an active, unrestricted license to cultivate, process, transport, and dispense low-THC cannabis, medical cannabis, and cannabis delivery devices.

**Medical Marijuana Use Registry:** a secure, online database that contains information about physicians, patients, caregivers, and employees or contractors of treatment centers. The use registry is accessible to law enforcement agencies, physicians, and treatment centers to verify the authorization of a patient or a caregiver to possess medical marijuana or a delivery device and record dispensed products or devices.

**Medical Marijuana Use Registry identification cards:** identification cards for patients and caregivers issued by the Department of Health.

**Medical use:** the acquisition, possession, use, delivery, transfer, or administration of marijuana authorized by a physician certification.

**Office of Medical Marijuana Use:** the Department of Health's program office that writes and implements the department's rules for medical marijuana, oversees the statewide Medical Marijuana use registry, and issues licenses for treatment centers to cultivate, process, and dispense medical marijuana to patients.

**Physician certification:** a physician's authorization for a patient to receive medical marijuana and a delivery device from a treatment center.

**Qualified patient:** a Florida resident who has been added to the use registry by a physician to receive medical marijuana or a delivery device and who has a use registry ID card.

**Qualified physician:** a person who holds an active, unrestricted license as an allopathic physician (ch. 458, F.S.) or as an osteopathic physician (ch. 459, F.S.) and meets the statutory requirements for physician education.

**Qualifying medical condition:** a chronic or terminal diagnosis that a patient must have to qualify to receive medical marijuana products or a delivery device.

**Seed-to-sale tracking database:** a computer software tracking system that traces marijuana from seed to sale and allows real-time, 24-hour access to data from all treatment centers and Testing Labs.

**Smoking:** burning or igniting a substance and inhaling the smoke. "Smoking" does not include the use of a vaporizer.

**Terminal condition:** a progressive disease or medical or surgical condition that causes significant functional impairment, is not considered by a treating physician to be reversible without the administration of life-sustaining procedures, and will result in death within one year after diagnosis if the condition runs its normal course.

**Tetrahydrocannabinol (THC):** is the principal psychoactive cannabinoid found in Cannabis. THC is the compound that causes the "high" reported by marijuana users, but it may also help relieve pain and nausea, reduce inflammation, and stimulate the appetite.

**Transportation manifest:** a list of all of the medical marijuana and delivery devices being transported in any commercial vehicle from a treatment center. The manifest is generated by the seed-to-sale tracking system and includes specific information about the delivery.

**Unlicensed activity:** any activity that is conducted without a required permit, certificate, or license.

## Medical Marijuana in Florida

The State of Florida has created laws and rules that grant chronically and terminally ill residents access to marijuana for medical use. Florida law does not permit homegrown marijuana.

The Florida Department of Health (DOH) oversees and manages the medical marijuana program. The Office of Medical Marijuana Use maintains the medical marijuana use registry for physicians, patients, and caregivers to track who is allowed to possess medical marijuana and delivery devices. DOH also grants law enforcement agencies access to the use registry database to verify a patient's or caregiver's legitimate possession and use of medical marijuana and delivery devices. The Office of Medical Marijuana Use monitors and tracks marijuana products from licensed treatment centers to their dispensaries, and regulates the licenses for the companies that grow, manufacture, and distribute medical marijuana.

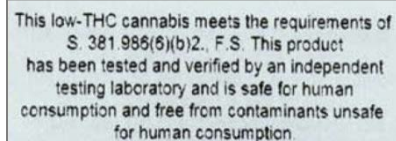
### **Distinctions between Low-THC cannabis and medical marijuana**

In the **Terms to Know** section, you can see that “low-THC cannabis” and “medical marijuana” are not interchangeable. In 2014, the State began allowing the use of low-THC cannabis. In 2017, access expanded to include other forms of medical marijuana, but the legislature ensured that low-THC cannabis would remain available to patients. All treatment centers still have to offer at least one low-THC product. Also, s. 381.986, F. S. makes distinctions between low-THC cannabis and medical marijuana, as you'll see throughout the Reference Guide, for example:

- A patient who is pregnant can use low-THC cannabis, but not medical marijuana.
- A patient can use low-THC cannabis on public transportation, but not medical marijuana.
- A patient can use low-THC cannabis in public, but not medical marijuana.
- A patient can use low-THC cannabis in a school bus, a vehicle, an aircraft, or a motorboat, but not medical marijuana.

Neither low-THC nor medical marijuana may be smoked in any of these public places.

As you will see in the **Products, Packaging, and Labeling** section, all medical marijuana and low-THC cannabis products must be clearly labeled. Here's an example:



This low-THC cannabis meets the requirements of S. 381.986(6)(b)2, F.S. This product has been tested and verified by an independent testing laboratory and is safe for human consumption and free from contaminants unsafe for human consumption.

## Medical Marijuana Updates

**2019 Senate Bill 182, enacted into law on March 18, 2019:**

- Allows the possession and use of medical marijuana in a form for smoking
- Allows delivery devices used for smoking marijuana to be purchased from a vendor other than a licensed treatment center
- Allows issuing a physician certification for smokable marijuana to patients under age 18 who have a terminal condition – with restrictions
- Treatment centers may not dispense more than one 35-day supply of marijuana to be smoked in a 35-day period or more than one 70-day supply in a 70-day period
- Patients may possess no more than 4 ounces of smokable marijuana at one time
- Requires that the original packaging for marijuana to be smoked must be plain, opaque, and white, without depictions of the product or images other than the treatment center logo
- Requires that patients/caregivers keep smokable marijuana products in the original packaging
- Prohibits smoking of medical marijuana in public, in enclosed indoor workplaces, and on private property when not permitted by the property owner

***Marijuana remains a Schedule I drug under both Florida and federal law,  
and its use remains prohibited under federal law.***



## Qualified Physicians

A **qualified physician** is a person who holds an active, unrestricted license as a physician in Florida and has completed a 2-hour DOH course and test (s. 381.986(1)(m), F.S.). A qualified physician is prohibited from being employed by or having any economic interest in a treatment center or Testing Lab (s. 381.986(3)(b), F.S.).

Only a qualified physician can issue a **physician certification**, which authorizes a patient to receive medical marijuana or delivery devices from a treatment center (s. 381.986(1)(k), F.S.). This is not considered to be a prescription because marijuana is a Schedule I controlled substance and, under federal law, “has no currently accepted medical use in treatment in the United States” (21 U.S.C s. 812). For a patient to receive a certification, the qualified physician must, under s. 381.986(4)(a), F.S.:

1. Conduct a physical examination while physically present in the same room as the patient and a full assessment of the patient’s medical history.
2. Diagnose the patient with at least one qualifying medical condition.
3. Determine that the medical use of marijuana would likely outweigh the potential health risks for the patient. This determination must be documented in the patient’s medical record. If a patient is a minor, a second physician must agree with that determination and document that agreement in the patient’s medical record.
4. Determine whether the patient is pregnant and document that in the patient’s medical record. A physician is prohibited from issuing a certification, except for low-THC cannabis, to a patient who is pregnant.
5. Review the patient’s controlled drug prescription history in the Prescription Drug Monitoring Program database.
6. Review the use registry and confirm that the patient doesn’t have an active certification from another physician.
7. Register as the one issuing the certification for the patient in the use registry.
  - a. Enter into the use registry the contents of the certification, including the patient’s qualifying condition and the dosage not to exceed the daily dose amount determined by DOH, the amount and forms of medical marijuana authorized for the patient, and any types of delivery devices needed by the patient.
  - b. Update the use registry within seven days after making any change to the original certification.
  - c. Deactivate the patient’s and the caregiver’s registration when the physician no longer recommends the medical use of marijuana for the patient.
8. Obtain the voluntary and informed written consent of the patient for medical use of marijuana each time the physician issues a certification. The patient, or the patient’s parent or legal guardian if the patient is a minor, must sign the informed consent form acknowledging that the physician has sufficiently explained its content. The consent form will be maintained in the patient’s medical record. The standardized form must include information related to:
  - a. the classification of marijuana as a Schedule I controlled substance
  - b. the current state of research on the efficacy of marijuana to treat the qualifying conditions specified under the “Qualified patients” section in this Reference Guide

- c. the potential effect that marijuana can have on a patient's coordination, motor skills, and cognition, including a warning against operating heavy machinery, operating a motor vehicle, or engaging in activities that require a person to be alert or respond quickly
- d. the potential side effects of marijuana use including the negative health risks associated with smoking marijuana
- e. the risks, benefits, and drug interactions of marijuana

To issue a certification for medical marijuana in a form for smoking, the qualified physician must document (1) that the patient has tried other routes of administration, (2) that the research supports smoking marijuana is effective for the condition, and (3) the opinion that the benefits outweigh the risks.

A qualified physician may not issue a physician certification for smokable marijuana to a patient under 18 years of age unless the patient is diagnosed with a terminal condition and the physician has determined that smoking is the most effective route of administration for the patient.

A qualified physician is prohibited from issuing a certification for more than three 70-day supply limits of marijuana for smoking or more than six 35-day supply limits for marijuana in a form for smoking. DOH determines a daily dose amount with equivalent dose amounts for each allowable form of medical marijuana dispensed by a treatment center dispensary. DOH will use the daily dose amount to calculate a 70-day supply (s. 381.986(4)(f), F.S.). The qualified physician must evaluate an existing patient at least once every 30 weeks before issuing a new certification (s. 381.986(4)(g), F.S.).

Under some circumstances, a patient can have an amount of medical marijuana that exceeds the DOH determination for a daily dose limit. A qualified physician can request an exception to the daily dose amount limit if the physician feels that the increased amount is necessary to address the patient's symptoms. That would potentially increase the 35-day supply limit of 2.5 ounces and the 70-day supply limit of 4 ounces for marijuana in a form for smoking as established in s. 381.986(14)(a), F.S. The request will be noted in the patient's use registry file. It must include, at a minimum, under s. 381.986(4)(f)1., F.S.:

1. the patient's qualifying medical condition
2. the dosage and delivery method that were insufficient to provide relief to the patient
3. a description of how the patient will benefit from an increased amount
4. the minimum daily dose amount that would be sufficient to treat the patient

### **Penalties Associated with Physicians**

A physician commits a first-degree misdemeanor if the physician issues a certification for medical marijuana without a reasonable belief that the patient is suffering from a qualifying medical condition (s. 381.986(12)(a), F.S.).

A physician who issues a certification for medical marijuana or a delivery device and receives compensation from a treatment center related to issuing a certification for medical marijuana or a delivery device is subject to disciplinary action under the applicable practice act and ss. 456.072(1)(n) and 381.986(12)(g), F.S.

## Qualified Patients

A **qualified patient** is a Florida resident who has been added to the use registry by a physician to receive medical marijuana or a delivery device and who has a use registry ID card (s. 381.986(1)(l), F.S.).

Patients must have been diagnosed with a **qualifying medical condition** that is either a chronic or terminal condition. A patient must be diagnosed with at least one of the following medical conditions to receive medical marijuana or a delivery device (s. 381.986(2), F.S.):

1. cancer
2. epilepsy
3. glaucoma
4. positive status for human immunodeficiency virus
5. acquired immune deficiency syndrome
6. post-traumatic stress disorder
7. amyotrophic lateral sclerosis
8. Crohn's disease
9. Parkinson's disease
10. multiple sclerosis
11. medical conditions of the kind or class that is the same as, or comparable to, those listed above
12. a terminal condition diagnosed by a physician who is not issuing the certification
13. chronic nonmalignant pain

Once the patient's information is in the use registry, the patient can apply to DOH for a use registry ID card for themselves and their caregivers. All patients and caregivers must obtain a use registry ID card to fill an order for low-THC cannabis, medical marijuana, or a delivery device at a treatment center. Once registered and approved, DOH will provide a temporary verification email that can be printed and used with a photo ID to obtain medical marijuana or a delivery device from a treatment center until the patient or caregiver receives their permanent use registry ID card (rule 64-4.011(7), F.A.C).

To apply for a use registry ID card, a person must:

1. be a permanent Florida resident or a seasonal resident (submit proof of residency)
2. be a patient or caregiver in the use registry
3. submit a completed application (electronic or paper) to the Office of Medical Marijuana Use

A certification can *only* be entered into the use registry. A patient or caregiver will never have a paper certification to present to a treatment center for medical marijuana or a delivery device.

## **Penalties Associated with Patients**

A person who fraudulently represents that they have a qualifying medical condition for the purpose of being issued a certification commits a first-degree misdemeanor (s. 381.986(12)(b), F.S.).

A person is not exempt from prosecution for a criminal offense due to impairment or intoxication from medical marijuana use, nor is the person excused from the requirement to submit to a breath, blood, urine, or other test to detect the presence of a controlled substance (s. 381.986(14)(f), F.S.).

Any patient who uses medical marijuana, not including low-THC cannabis, or caregiver who administers medical marijuana, not including low-THC cannabis, in plain view of or in a place open to the general public; in a school bus, a vehicle, an aircraft, or a boat; or on the grounds of a school except as provided in s. 1006.062, F. S., commits a first-degree misdemeanor (s. 381.986(12)(c), F.S.). Note that even low-THC cannabis may not be smoked in these locations.

A person is prohibited from the operating any vehicle, aircraft, train, or boat while under the influence of medical marijuana (s. 29(c)(4), Article X of the State Constitution).

Florida law does not permit marijuana to be grown by any individual. Medical marijuana provided to a patient or caregiver must be dispensed through a treatment center. Any patient or caregiver who cultivates marijuana or who purchases or acquires marijuana from any person or entity other than a treatment center violates and is subject to the penalties provided in s. 893.13, F.S., (s. 381.986(12)(d), F.S.).

Any patient charged with a violation of chapter 893 must have their certification immediately suspended by the Office of Medical Marijuana Use until final disposition of any alleged offense. Thereafter, the Office of Medical Marijuana Use may extend the suspension, revoke the registration, or reinstate the registration of that patient (s. 381.986(5)(d), F.S.).

## Caregivers

A **caregiver** is a Florida resident who has agreed to assist with a patient's medical use of marijuana, has a use registry ID card, and meets the requirements for becoming a caregiver (s. 381.986(1)(a), F.S.).

### **Caregiver Requirements**

A caregiver must:

1. be a Florida resident (s. 381.986(6)(b)2., F.S.)
2. be at least 21 years old (s. 381.986(6)(b)2., F.S.)
3. be designated by a patient as a caregiver
4. agree in writing to assist the patient with medical use of marijuana (s. 381.986(6)(b)3., F.S.)
5. successfully complete DOH's caregiver certification course and renew it every two years ( s. 381.986(6)(b)5., F.S.)
6. pass a level 2 background screening (s. 435.04, F.S.), unless the patient is a close relative of the caregiver (ss. 381.986(6)(b)6. and (9), F.S.)
7. be registered in the use registry (s. 381.986(6)(b)4., F.S.)
8. possess a use registry ID card, which must be renewed annually (s. 381.986(7)(a), F.S.)
9. not be a qualified physician as defined in chapter 381 and not be employed by, or have a financial interest in, a treatment center or a Testing Lab (s. 381.986(6)(b)1., F.S.)

### **Caregiver Guidelines**

1. A patient can have only one designated caregiver unless one of the following applies:
  - a. the patient is a minor and the caregivers are parents or legal guardians
  - b. the patient is an adult who has an intellectual or developmental disability that prevents the patient from protecting or caring for themselves without assistance or supervision and the designated caregivers are the parents or legal guardians of the patient
  - c. the patient is admitted to a hospice program (s. 381.986(6)(c), F.S.)
  - d. the patient is participating in a research program in a teaching nursing home under s. 1004.4351, F.S.
2. A caregiver can have only one designated patient unless one of the following applies:
  - a. the caregiver is the parent or legal guardian of more than one minor who is a patient
  - b. the caregiver is the parent or legal guardian of more than one adult who is a patient and who has an intellectual or developmental disability that prevents the patient from protecting or caring for themselves without assistance or supervision
  - c. all patients that the caregiver assists are admitted to a hospice program and have requested the caregiver's assistance with the medical use of marijuana, the caregiver is a hospice employee, and the caregiver provides personal care or other services directly to clients as a part of the caregiver's hospice job (s. 381.986(6)(d), F.S.)

- d. all patients the caregiver assists are participating in a research program in a nursing home under s. 1004.4351, F.S.
3. A caregiver is prohibited from receiving compensation, other than actual expenses incurred, for services provided to the patient (s. 381.986(6)(e), F.S.).
4. If a patient is a minor, only the caregiver can purchase or administer medical marijuana (s. 381.986(6)(f), F.S.).
5. A caregiver must be in immediate possession of their use registry ID card at all times when in possession of medical marijuana or a delivery device and must present the card upon request of a law enforcement officer (s. 381.986(6)(g), F.S.).
6. A caregiver's use registry ID card will display their name and unique ID number and the names and unique ID numbers of the patients they assist (s. 381.986(7)(a)5., F.S.).
7. A caregiver can fill an order only for the patient or patients listed on their caregiver use registry ID card.
8. A caregiver can purchase from a treatment center a delivery device and up to the amount of medical marijuana authorized in the certification. All medical marijuana purchased must remain in its original packaging (s. 381.986(14)(a), F.S.).
9. It is possible for a patient to also be a caregiver for another patient. The patient would have to apply for both a patient use registry ID card for themselves and a caregiver use registry ID card for the other patient.

## **Penalties Associated with Caregivers**

A caregiver who cultivates marijuana or who purchases or acquires marijuana from any person or entity other than a treatment center violates s. 893.13, F.S. and is subject to the penalties provided in that section (s. 381.986(12)(d), F.S.).

A caregiver who violates any of the applicable provisions of s. 381.986, F.S. or applicable DOH rules commits a second-degree misdemeanor for the first offense and a first-degree misdemeanor for a second or subsequent offense (s. 381.986(12)(f), F.S.).

A caregiver is prohibited from consuming medical marijuana obtained by or for the patient (s. 29(a)(7), Article X of the State Constitution).

DOH will immediately suspend the registration of any caregiver charged with a violation of chapter 893, F.S. until final disposition of any alleged offense. After the final disposition, DOH can extend the suspension, revoke the registration, or reinstate the registration (s. 381.986(5)(d), F.S.).

Under s. 381.986(5)(e), F.S., DOH will revoke a caregiver's registration if the caregiver cannot pass the background screening pursuant to s. 381.986(9), F.S.

## **Medical Marijuana Use Registry and Identification Cards**

The **Medical Marijuana Use Registry** is an online database for physicians, patients, and caregivers. The use registry is designed to prevent the active registration of a patient by multiple physicians (s. 381.986(5)(a), F.S.). Law enforcement agencies can have access to the use registry to verify that a patient or caregiver is authorized to possess medical marijuana or a delivery device (rule 64-4.009, F.A.C.).

DOH is responsible for verifying the resident status of patients and caregivers. Residents can be either permanent or seasonal, but they must provide documentation to show proof of a residential address. A seasonal resident is any person who temporarily resides in Florida for least 31 consecutive days in each calendar year, maintains a temporary residence here, returns to the state of their residence at least one time during each calendar year, and is registered to vote or pays income tax in another state (s. 381.986(5)(b)2., F.S.). For example, a person could hold a use registry ID card with a winter home in Boca Raton and a New Jersey driver license.

DOH issues use registry ID cards for patients and caregivers. Cardholders must renew them annually. The ID cards are designed to be resistant to counterfeiting and tampering and must include the following (s. 381.986(7)(a), F.S.):

1. the name, address, and date of birth of the patient or caregiver
2. a full-face, passport-type, color photograph of the patient or caregiver taken within the 90 days immediately preceding registration or a Florida driver license or ID card photograph obtained from the Florida Department of Highway Safety and Motor Vehicles
3. identification as a patient or a caregiver
4. the unique ID number of the patient in the use registry
5. for a caregiver, the name and unique ID number of the caregiver and the patient or patients that the caregiver assists
6. the expiration date of the use registry ID card

DOH must receive written consent from a patient's parent or caregiver before issuing a use registry ID card to a patient who is a minor (s. 381.986(7)(b), F.S.).

### **Penalties Associated with Use Registry Identification Cards**

DOH has established procedures for issuing, renewing, suspending, replacing, surrendering, and revoking use registry ID cards (s. 381.986(7)(c), F.S.). DOH can suspend or revoke the registration of a patient or caregiver if they (s. 381.986(5)(c), F.S.):

1. provide misleading, incorrect, false, or fraudulent information to DOH;
2. obtain a supply of medical marijuana greater than the Certification authorized amount;
3. falsify, alter, or otherwise modify a use registry ID card;
4. fail to timely notify DOH of any changes to their patient status; or
5. violate the requirements of s. 381.986, F.S. or any rule adopted under that section.

DOH will revoke a caregiver registration if the caregiver does not pass the background check (s. 381.986(5)(e), F.S.).

DOH can revoke the registration of a patient or caregiver who cultivates marijuana or who acquires, possesses, or delivers marijuana from any person or entity other than a treatment center (s. 381.986(5)(f), F.S.).

DOH will revoke the registration of a patient and their associated caregiver upon notification that the patient no longer meets the criteria to be qualified as a patient (s. 381.986(5)(g), F.S.). A patient or caregiver must return their use registry ID card to DOH within five business days after the registration has been revoked (s. 381.986(7)(e), F.S.).

**Figure 1** is a sample patient use registry ID card from 2015. It shows the original name of the registry (Compassionate Use Registry) and the original name of the Office of Medical Marijuana Use (Office of Compassionate Use.) The caregiver use registry ID cards are similar in appearance to the patient use registry ID cards but contain additional information about the patient or patients the caregivers assist.

**Figure 1: 2015 Sample Patient Medical Marijuana Use Registry Identification Card**



## Law Enforcement Authorization to Use the Medical Marijuana Use Registry

DOH maintains the use registry (rule 64-4.009, F.A.C.). Information in the use registry that is considered confidential and exempt from public records requirements includes (s. 381.987(1), F.S.):

1. a patient's or caregiver's personal identifying information, including name, address, date of birth, photograph, and telephone number
2. all personal identifying information collected for the purpose of issuing a patient or caregiver use registry ID card
3. all personal identifying information related to a Certification and the dispensing of marijuana, including information about the patient's diagnosis, exception requests to the daily dose amount limit, and the patient's experience related to the medical use of marijuana
4. a physician's Drug Enforcement Administration number, residential address, and government-issued identification card

DOH will allow access to the confidential and exempt information in the use registry to a law enforcement agency only for the purpose of investigating a violation of law regarding marijuana. The agency can verify the patient's medical use of marijuana claim under s. 381.986, F.S. A law enforcement agency has access to all information except for the patient's diagnosis (s. 381.987(2)(a), F.S.). However,



additional information in the registry database that may not be viewable in real time may be obtained pursuant to a valid subpoena issued to the Office of Medical Marijuana Use.

### **Law Enforcement Agency Access**

DOH has established procedures for granting access to the use registry. Each law enforcement agency can assign a person to be a “Master User” for their organization. Master Users have the ability to create and manage user accounts for their agency. The Master User adds staff (for example, dispatcher, patrol officer, investigator) to the agency user List. Each person on the list will complete an online application and DOH training. When the application and training are completed, the Master User approves the application and forwards it electronically to the Office of Medical Marijuana Use for final approval. The Office of Medical Marijuana Use will send the new user an email verifying access and providing log-on instructions for the use registry. Each agency is responsible for maintaining its User List, including deactivating users who have changed roles or are no longer employed with the agency.

### **Penalties Associated with Misuse of the Medical Marijuana Use Registry**

All information released by DOH remains confidential and exempt from public records requirements, and a person who receives access to such information must maintain the confidential and exempt status of the information received (s. 381.987(4), F.S.). A person who willfully and knowingly violates the confidentiality of the information commits a third-degree felony (s. 381.987(5), F.S.).

## Medical Marijuana Treatment Centers

A **Medical Marijuana Treatment Center** is an entity licensed by DOH to cultivate, manufacture, process, acquire, possess, sell, deliver, distribute, dispense, and lawfully dispose of medical marijuana or delivery devices (s. 29(a)(5), Article X of the State Constitution and s. 381.986(14)(c), F.S.). DOH develops procedures to regulate treatment centers to ensure proper security, record keeping, testing, labeling, inspection, and safety (s. 29(d)(1)c., Article X of the State Constitution).

A patient cannot possess and a treatment center cannot sell whole marijuana flowers (buds). If whole flower substances are said to be medical marijuana, they are not from a licensed treatment center and are not in compliance with s. 29, Article X of the State Constitution or s. 381.986, F.S.

DOH licenses treatment centers to ensure statewide accessibility and availability for patients registered in the use registry (s. 381.986(8)(a), F.S.). The approval process for a treatment center is a multistage, 2-year cycle for cultivation, processing, and distribution authorization (rule 64-4.002 (2)(f), F.A.C.). An applicant receives approval at each stage prior to dispensing marijuana products (rule 64-4.001, F.A.C.).

Each treatment center must receive authorization at three stages, (1) cultivation authorization, (2) processing authorization, and (3) dispensing authorization (rule 64-4.005, F.A.C.).

## **Medical Marijuana Treatment Center Dispensaries**

Each treatment center can currently have up to 25 **dispensaries** within the State (s. 381.986(8)(a)5.a., F.S.). When dispensing medical marijuana or a delivery device, a treatment center, under s. 381.986(8)(e)16, F.S.:

1. can dispense any active, valid order for low-THC cannabis, medical marijuana, and delivery devices that have been entered into the use registry
2. is prohibited from dispensing more than a 70-day supply of medical marijuana within any 70-day period to a patient or caregiver, unless DOH has granted an exception for a higher dosage under s. 381.986(4)(f)1., F.S. A 70-day supply of medical marijuana in a form for smoking may not exceed 4 ounces unless DOH has granted an exception for a higher dosage.
3. is prohibited from dispensing more than a 35-day supply of marijuana in a form for smoking within any 35-day period, unless DOH has granted an exception for a higher dosage under s. 381.986(4)(f)1., F.S.). A 35-day supply of marijuana in a form for smoking may not exceed 2.5 ounces unless DOH has granted an exception for a higher dosage.
4. must have the treatment center employee who dispenses the medical marijuana or a delivery device enter their name or unique employee identifier into the use registry
5. must verify that the patient or caregiver has:
  - a. an active registration in the use registry and an active
  - b. a valid use registry ID card
  - c. an amount and type of medical marijuana to dispense that matches the Certification in the use registry and must not already have been filled
6. is prohibited from dispensing medical marijuana to a patient who is a minor. If the patient is younger than 18 years of age, the marijuana must be dispensed to the patient's caregiver

7. is prohibited from dispensing or selling any other type of cannabis, alcohol, or illicit drug-related product, including pipes or wrapping papers made with tobacco or hemp, other than a delivery device specified in the Certification
8. must, upon dispensing the medical marijuana or delivery device, record in the use registry the date, time, quantity, and form of medical marijuana dispensed; the type of delivery device dispensed; and the name and use registry ID number of the patient or caregiver
9. must ensure that patient records are not visible to anyone other than the patient, the caregiver, and authorized treatment center employees

## **Dispensary Security**

Treatment centers are required by statute to ensure the safety and security of their production facilities and retail dispensaries. They must also maintain adequate controls against the diversion, theft, and loss of medical marijuana or delivery devices by doing the following:

1. Ensure operational security and surveillance systems are in place.
  - a. Maintain a fully operational security alarm system that secures all entry points and perimeter windows and has motion detectors; pressure switches; and duress, panic, and hold-up alarms.
  - b. Maintain a 24-hour video surveillance system that meets the following criteria:
    - (I) Cameras are fixed in a place that allows for the clear identification of persons and activities in controlled areas of the premises. Controlled areas include grow rooms, processing rooms, storage rooms, disposal rooms or areas, and point-of-sale rooms.
    - (II) Cameras are fixed in entrances and exits to the areas and will record from both indoor and outdoor vantage points.
    - (III) Recorded images must clearly and accurately display the time and date.
    - (IV) The treatment center must retain video surveillance recordings for at least 45 days or longer at the request of a law enforcement agency.
2. Ensure that the treatment center's outdoor areas have sufficient lighting from dusk until dawn.
3. Ensure that the indoor areas where dispensing occurs includes a waiting area with sufficient space and seating to accommodate patients and caregivers and at least one private consultation area that is isolated from the waiting area and the area where dispensing occurs. A treatment center cannot display products or dispense marijuana or delivery devices in the waiting area.
4. Ensure that medical marijuana or delivery devices are not dispensed between the hours of 9 p.m. and 7 a.m. The facility can perform all other operations and deliver marijuana to patients 24 hours a day.
5. Store medical marijuana in a secured, locked room or a vault.
6. Require at least two of its employees or two employees of a contracted security agency to be on site at all times where marijuana is cultivated, processed, or stored.
7. Require each employee or contractor to wear a photo ID badge at all times while on site.
8. Require each visitor to wear a visitor pass at all times while on site.

9. Implement an alcohol- and drug-free workplace policy.
10. Report to local law enforcement within 24 hours after the treatment center is aware of a medical marijuana theft, diversion, or loss (s. 381.986(8)(f), F.S.).

### **Seed-to-Sale Tracking Database**

DOH is required to establish, maintain, and control a computer software tracking system that traces the medical marijuana from seed to sale and allows real-time, 24-hour access by DOH to data from all treatment centers and Testing Labs. Each treatment center must use a **seed-to-sale tracking database**, either the one established by DOH or by its own system or integrated with DOH's software. The system includes information about when marijuana:

1. seeds are planted
2. plants are harvested and destroyed
3. is transported
4. is sold
5. is stolen, diverted, or lost (s. 381.986(8)(d), F.S.)

### **Penalties Associated with Medical Marijuana Treatment Centers**

Most noncompliance penalties for treatment centers are administrative actions that are the responsibility of DOH (s. 381.986(10)(f)-(h), F.S.). Interagency agreements between DOH and the Florida Department of Agriculture and Consumer Services ensure cooperation and coordination for their respective regulatory and authorization responsibilities. DOH, the Florida Department of Highway Safety and Motor Vehicles, and the Florida Department of Law Enforcement can enter into interagency agreements for information sharing and enforcement purposes (s. 381.986(10)(d), F.S.).

DOH is required to revoke the approval of a treatment center if any of the following situations occur (rule 64-4.004(1), F.A.C.):

1. Treatment center cultivates low-THC cannabis before obtaining DOH's authorization
2. Treatment center knowingly dispenses medical marijuana to a person other than a patient or caregiver without notifying DOH and taking appropriate corrective action

DOH can revoke the approval of a treatment center if any of the following failures impact the accessibility, availability, or safety of medical marijuana products (rule 64-4.004(2), F.A.C.):

1. failure to comply with the requirements in s. 381.986, F.S., or this rule chapter
2. failure to implement the policies and procedures or comply with the statements provided to DOH with the original or renewal application

DOH can revoke the approval of a treatment center for failure to meet the following deadlines (rule 64-4.004(3), F.A.C.):

1. failure to seek Cultivation Authorization within 75 calendar days of application approval
2. failure to begin dispensing within 210 calendar days of being granted a Cultivation Authorization (rule 64-4.005(2), F.A.C.)

## **Medical Marijuana Testing Laboratories**

A **Medical Marijuana Testing Laboratory** is a facility that has been certified by DOH to collect and analyze medical marijuana samples from a treatment center (s. 381.986(1)(h), F.S.). It can acquire, possess, test, transport, and lawfully dispose of medical marijuana (s. 381.986(14)(d), F.S.). It can acquire medical marijuana only from a treatment center, and it is prohibited from selling, distributing, or transferring medical marijuana received from a treatment center unless transferring a sample to another Testing Lab in Florida (s. 381.988(4), F.S.).

### **Penalties Associated with Medical Marijuana Testing Laboratories**

Most penalties for noncompliance for Testing Labs are administrative actions that are the responsibility of DOH. DOH can refuse to issue or renew, or can suspend or revoke, the certification of a Testing Lab that is found to be in violation of s. 381.988, F.S., or any adopted rules. DOH can impose fines for violations of s. 381.988, F.S., or any adopted rules (s. 381.988(8), F.S.). The following acts constitute grounds for disciplinary action (s. 381.988(7), F.S.):

1. permitting unauthorized persons to perform technical procedures or issue reports
2. demonstrating incompetence or making consistent errors in the performance of testing or erroneous reporting
3. performing a test and rendering a report on the test to a person or entity not authorized by law to receive such services
4. failing to file any required report
5. reporting a test result if the test was not performed
6. failing to correct deficiencies within the time required by DOH
7. violating or aiding and abetting in the violation of s. 381.986, F.S. or adopted rule

## Products, Packaging, and Labeling

### **Medical Marijuana in Florida**

There are over 100 compounds in *cannabis*, called *cannabinoids*, some of which have potential to relieve the symptoms of illness. The two most well-known cannabinoids are *cannabidiol* (CBD) and *tetrahydrocannabinol* (THC). CBD has a number of reported beneficial uses, such as reducing the effects of post-traumatic stress disorder, schizophrenia, rheumatoid arthritis, epilepsy, and cardiovascular disease. THC has many of these characteristics as well, but it usually causes the intoxicated effect most often associated with marijuana use.

Certain strains of medical marijuana are bred to have different amounts of each cannabinoid and are recommended for different conditions. Patients may benefit from using a combination dose of THC, CBD, or other cannabinoids, because the mixture can prolong the effect of the drug and help to reduce the anxiety, paranoia, and memory loss that are often associated with recreational marijuana use. Florida law permits the use of low-THC cannabis and medical marijuana. Only low-THC cannabis can be used in public places, but it cannot be smoked (s. 381.986(1)(j)5., F.S.).

Florida law requires that patients keep the medical marijuana they purchase from a treatment center in the original packaging (s. 381.986(14)(a), F.S.) but does not attach criminal penalties for failure to do so.

### **Products and Delivery Devices**

There are a variety of products and delivery devices available to patients. These products and delivery devices are a representative list of the types of products that are currently available or expected to be available in Florida.

*Topical products* are rubbed on or affixed to the skin, such as creams, lotions, oils, and dermal patches.

*Inhalant products* are breathed in by the patient by smoking or through the use of a pen-style vaporizer (vape pen) or a handheld vaporizer. The pen cartridges or vape cups contain purified oil or powder that is converted to vapor for the patient to inhale.

*Ingestible products* are eaten, swallowed, or placed under the tongue. They include, but are not limited to, lozenges, sublingual tinctures, pills, oral syringes, pastes, and oral sprays.

*Edibles* are food items that treatment centers will produce and dispense. They are made with marijuana oil, but no other form of marijuana (s. 381.986(1)(d), F.S.). Edibles can be in the form of, gummies, baked goods, chocolates, or drink powders. ~~As of July 2018, DOH had not completed a drafted rule in the Florida Administrative Code for regulating edibles, which is required before any treatment center can begin processing or dispensing edibles (s. 381.986(8)(e) F.S.).~~

A treatment center that produces edibles must hold a permit to operate as, and meet all the requirements of, a food establishment pursuant to the Florida Food Safety Act, chapter 500, F.S. Edibles cannot contain more than 200 milligrams of THC, and a single portion may not exceed 10 milligrams of THC. They Edibles cannot be attractive to children. For example, they cannot be made in the shape of a person or animal, be decorated with icing or sprinkles, or ~~Finally, edibles cannot~~ have any color added.

## Packaging and Labeling Requirements

Under s. 381.986(8)(e)11.e., F. S., all products must be in packaging that meets the compliance requirements for the United States Poison Prevention Packaging Act of 1970, 15 U.S.C. ss. 1471 et seq.:

1. All products must leave the treatment center in child-resistant containers and packaging.
2. Child-resistant containers and packaging must be non-transparent.
3. Child-resistant containers and packaging should be re-closable.
4. The product name must not be similar to products marketed to children.

The medical marijuana or low-THC cannabis is packaged in a container that has a firmly affixed and legible label stating the following information:

1. meets the requirements for safe consumption
2. name of the treatment center from which the medical marijuana originates
3. batch number and harvest number of the medical marijuana and the date dispensed
4. name of the physician who issued the Certification
5. name of the patient
6. product name, if applicable, and dosage form, including concentration of THC and CBD
7. recommended dose
8. warning that it is illegal to transfer medical marijuana to another person
9. DOH universal symbol for marijuana (s. 381.986(8)(e)11.f., F. S.) ~~(NOT YET AVAILABLE)~~



There are additional labeling requirements for edibles products:

1. Each edible must be individually sealed in plain, non-transparent containers with no images other than the treatment center's DOH-approved logo and the DOH universal marijuana symbol.
2. The DOH universal symbol for marijuana must be on all edibles when practical.
3. The container must include:
  - a. list of all of the ingredients
  - b. storage instructions
  - c. an expiration date
  - d. legible and prominent warning to keep away from children and pets
  - e. warning that the product is not produced or inspected to FDA safety standards (s. 381.986(8)(e)15., F. S.)

There are additional labeling requirements for products for smoking:

1. be packaged in a sealed receptacle that is plain, opaque, and white with no images other than the treatment center's logo and the DOH universal marijuana symbol,
2. have a prominent warning to keep away from children,

3. have a warning stating marijuana smoke contains carcinogens and may negatively affect health.



## **Package Documentation and Online Product Information**

The treatment center must include in each package an insert with information on the specific product dispensed related to:

1. clinical pharmacology
2. indications and use
3. dosage and administration
4. dosage forms and strengths
5. contraindications
6. warnings and precautions
7. adverse reactions (s. 381.986(8)(e)12., F. S.)

Each treatment center that dispenses medical marijuana and delivery devices must make available to the public on its website (s. 381.986(8)(i), F. S.):

1. each medical marijuana and low-THC cannabis product available for purchase, including the form, strain of marijuana from which it was extracted, CBD and THC content, dose unit, total number of doses available, and the ratio of CBD to THC for each product
2. the price for a 30-day, 50-day, and 70-day supply at a standard dose for each marijuana and low-THC cannabis product available for purchase
3. the price for each delivery device available for purchase
4. if applicable, any discount policies and eligibility criteria for such discounts (s. 381.986(8)(i), F. S.)

## Transportation of Products

Patients or caregivers, authorized researchers, and treatment center and Testing Lab employees or contractors are the only individuals allowed to transport medical marijuana in this State. This means that medical marijuana and delivery devices can be transported in commercial or privately owned vehicles. There are a variety of reasons for transporting medical marijuana and delivery devices, such as retrieving an order, moving products between production facilities, and delivering patients' and caregivers' orders to dispensaries for pickup.

Treatment centers can also deliver medical marijuana and delivery devices directly to patients. Medical marijuana and delivery devices cannot be mailed or shipped under the Controlled Substances Act (21 U.S.C. ss. 843 and 863).

Treatment center delivery employees must verify the identity of a patient or caregiver with their use registry ID card at the time of delivery. Treatment center delivery employees can deliver to the patient or caregiver only after ID verification and cannot leave the delivery items with a non-authorized person.

### **Commercial Transportation of Products**

All commercial transactions must have a **transportation manifest** that accompanies the shipment. To ensure safe commercial transport, a treatment center must (s. 381.986(8)(g), F. S.):

1. Maintain a transportation manifest in any vehicle transporting medical marijuana. The transportation manifest must be generated from a treatment center's seed-to-sale tracking system and include:
  - a. departure date and approximate time of departure
  - b. name, location address, and license number of the originating treatment center
  - c. name and address of the recipient of the delivery
  - d. quantity and form of any medical marijuana or delivery device being transported
  - e. arrival date and estimated time of arrival
  - f. delivery vehicle make and model and license plate number
  - g. name and signature of the treatment center employees delivering the product
    - (I) A copy of the transportation manifest must be provided to each person, treatment center, or Testing Lab that receives a delivery. The person, or a representative of the center or laboratory, must sign a copy of the transportation manifest acknowledging receipt.
    - (II) A person transporting medical marijuana or a delivery device must present a copy of the transportation manifest and their employee ID card to a law enforcement officer upon request.
    - (III) treatment centers and Testing Labs must retain copies of all transportation manifests for at least three years.
2. Ensure that only vehicles in good working order are used to transport marijuana.
3. Lock medical marijuana and delivery devices in a separate compartment or container within the vehicle.

4. Require employees to have possession of their employee ID card at all times when transporting marijuana or delivery devices.
5. Require at least two persons to be in a vehicle transporting medical marijuana or delivery devices, and require at least one person to remain in the vehicle while the medical marijuana or delivery device is being delivered.
6. Provide specific safety and security training to employees transporting or delivering medical marijuana and delivery devices.

### **Penalties Association with Commercial Transportation of Products**

Drivers required to have a commercial driver's license who operate a commercial motor vehicle are subject to the controlled substance- and alcohol-testing rules. As marijuana is a Schedule I controlled substance, a commercial driver's license holder is prohibited from performing any safety-sensitive function while using marijuana in any form regardless of medical use (49 C.F.R. part 382).

A commercial driver who is on duty is prohibited from possessing, being under the influence of, or using any drugs or other substances that impair perception and performance. The possession prohibition does not apply to possession of substances such as marijuana products listed on a transportation manifest and transported as part of an authorized shipment. A driver who has an active order for medical marijuana cannot be in possession of the product while in a commercial motor vehicle (49 C.F.R. part 391).

A commercial driver who is transporting marijuana or delivery devices on behalf of a treatment center or Testing Lab and who fails or refuses to present a transportation manifest upon the request of a law enforcement officer commits a second-degree misdemeanor (s. 381.986(12)(h), F.S.).

Marijuana and delivery devices can be transported only within the State of Florida. Transportation across state lines can result in criminal sanction.

### **Transportation of Personal-Use Products**

Patients and caregivers can have up to a 70-day supply of products. Caregivers with more than one patient may have multiple orders with them in a vehicle.

### **Penalties Associated with Personal Use Transportation of Products**

A patient or caregiver must be in immediate possession of their use registry ID card at all times when in possession of medical marijuana or a delivery device and must present the use registry ID card upon the request of a law enforcement officer (s. 381.986(6)(g), F.S.). A patient or caregiver in possession of medical marijuana or a delivery device who fails or refuses to present their use registry ID card upon the request of a law enforcement officer commits a second-degree misdemeanor, unless it can be determined through the use registry that the person is authorized to be in possession of medical marijuana or the delivery device (s. 381.986(12)(e)1., F.S.). A person charged with a violation of this paragraph must not be convicted if, before or at the time of the court or hearing appearance, the person produces a use registry ID card that is valid at the time of the charge. The clerk of the court is authorized to dismiss the case at any time before the defendant's appearance in court (s. 381.986(12)(e)2., F.S.).

## **Public and Place-of-Employment Use**

### **Public Use**

Under s. 381.986(1)(j)5., F.S., use of medical marijuana in places open to the public is prohibited in the following places:

1. on any form of public transportation, except for low-THC cannabis
2. in any public place, except for low-THC cannabis
3. in a patient's place of employment, except when permitted by an employer
4. in a state, local, or private DOC or DJJ correctional institution
5. on the grounds of a preschool, primary school, or secondary school, except as provided in s. 1006.062, F.S.
6. in a school bus, a vehicle, an aircraft, or a motorboat except for low-THC cannabis

### **Use at Place-of-Employment**

The Florida Statutes do not prevent an employer from establishing, continuing, or enforcing a drug-free workplace program or policy. An employer does not have to accommodate an employee working while under the influence of medical marijuana or an employee using medical marijuana in the workplace. Section 381.986(15), F.S., relating to the medical use of marijuana, does not create a cause of action against an employer for wrongful discharge or discrimination.

Under s. 381.986(1)(j)6., F.S., use of medical marijuana is prohibited in an enclosed indoor workplace as defined in s. 386.203(5).

### **Use at School**

Pursuant to s. 1006.062(8), F.S., school personnel are allowed to possess medical marijuana for use by a student who is a patient (s. 381.986(14)(g), F.S.). Each district school board must adopt policies and procedures to allow a student who is a patient to use medical marijuana. The policy and procedure must:

1. ensure access by the patient
2. identify how the medical marijuana will be received, accounted for, and stored
3. establish processes to prevent access by other students or school personnel whose access would be unnecessary for implementation of the policy (s. 1006.062(8), F.S.)

### **Penalties Association with Public and Place-of-Employment Use**

A patient who uses, or a caregiver who administers, marijuana in plain view of or in a place open to the general public or on the grounds of a school (except as provided in s. 1006.062, F.S.), commits a first-degree misdemeanor (s. 381.986(12)(c), F.S.). Using low-THC cannabis in these places is permitted but not by smoking.

## Enforcement Procedures and Criminal Penalties

### **Violations of Chapter 893, F.S.**

Medical marijuana must be (1) authorized by a physician Certification and (2) acquired from a Department of Health-licensed medical marijuana treatment center. Many marijuana violations you encounter will continue to be charged under s. 893.13, F.S. simply because they're the same crimes they've always been, and medical marijuana doesn't change that.

#### **Growing, processing, distributing, selling, or dispensing marijuana – s. 381.986(12)(j), F.S.**

A person or entity that cultivates, processes, distributes, sells, or dispenses marijuana and is not licensed as a medical marijuana treatment center violates s. 893.13, F.S. That hasn't changed.

#### **Possessing a cannabis plant – s. 381.986(1)(j), F.S.**

While possessing up to 4 ounces of marijuana for medical use is legal, possessing cannabis seeds or entire plants, whether growing or harvested, is still illegal under s. 893.13, F.S.

#### **Possessing food items – s. 381.986(1)(j), F.S.**

The definition of medical marijuana specifically excludes "possession, use, or administration of marijuana...in the form of commercially produced food items other than edibles." Legal edibles must be dispensed by a treatment center. Possession of a food item containing marijuana that didn't come from a treatment center is still illegal under s. 893.13, F.S.

#### **Bringing marijuana into Florida – s. 893.13(5), F.S.**

Medical marijuana treatment centers licensed by the Florida Department of Health (DOH) are the sole source for medical marijuana. Bringing medical or recreational marijuana from another state into Florida violates s. 893.13, F.S., and Florida has no reciprocity agreements with other states. So tourists, for example, authorized to possess and use medical marijuana in their home state, could be charged under section 893.13 for bringing it to Florida.

These four cases have never been part of Florida's medical marijuana program. Even if a person presents a use registry ID card in any of these situations, they are violating drug abuse statutes (ch. 893 F.S.) because a qualified physician didn't authorize it, and a DOH-licensed treatment center didn't dispense it.

## Confirm Authorization in the Use Registry

Other violations you encounter are part of the medical marijuana program. The DOH medical marijuana use registry is the primary tool you or dispatch will employ to confirm a person's authorization to possess and use medical marijuana products.

ID Card information must match an active registration.



The physician certification must match the product label information.

### 1. Confirm ID card matches an active registration in the use registry

DOH issues medical marijuana identification cards and maintains individual account records. In most cases, a person will have a permanent use registry ID card. Once registered and approved by DOH, the patient or caregiver will receive a temporary verification email from DOH that can be printed and used with a photo ID to obtain medical marijuana or a delivery device from a treatment center until they receive their permanent ID card. You can use information in the email to confirm registration in the use registry.

**Request ID card** A patient or caregiver in possession of medical marijuana or a delivery device must present their ID card upon request of a law enforcement officer. If you can't confirm they possess medical marijuana, they aren't required to present the ID card.

A patient or caregiver who fails or refuses to present the ID card commits a second-degree misdemeanor under s. 381.986(12)(e), F.S. unless it can be determined through the use registry that the person is authorized to possess/use medical marijuana or the delivery device. If they don't have an ID card with them, you can try to search by name on the label. The clerk of the court can dismiss that charge if the defendant produces a use registry ID card before his or her appearance in court as long as the card was valid at the time of arrest.

**Confirm the ID card matches the person** Use the ID card's personal identification information (i.e., photo, name, date of birth, address) to confirm the cardholder's identity. If the ID card photo doesn't match or you're uncertain about the match, request a different photo identification card to confirm.

**Examine ID card** Use registry ID cards are resistant to tampering but should be examined. If you receive an ID card that has been falsified, altered, or modified, notify DOH. They may suspend or revoke the patient or caregiver's registration (s. 381.986(5)(c)3., F.S.). A person who possesses or manufactures a blank, forged, stolen, fictitious, fraudulent, or counterfeit ID card can be charged with a third-degree felony under s. 381.986(12)(l), F.S..

**Confirm registration in the use registry** You can now initiate a database search.

- If the use registry search doesn't return a match, investigate further to determine where they got the ID card.

- If in possession of medical marijuana or a delivery device, ask how they acquired it. Possession of medical marijuana or a delivery device without authorization can be charged under s. 893.13, F.S.
- Note that the “20 grams or less” exception for cannabis in s. 893.13(3), F.S. does not apply to medical marijuana products that are derivative products using extracted resin. All products are derivatives except marijuana in a form for smoking.
- If the use registry shows the patient or caregiver registration has been suspended or revoked, you may confiscate the medical marijuana and delivery device.

### **Confirm the product matches the physician certification.**

**Product should be in its original package** An officer can use the original packaging to confirm that the medical marijuana is from a licensed treatment center. Delivery devices may be from a treatment center or a vendor. Statute says “all marijuana purchased must remain in its original packaging” (s. 381.986(14)(a), F.S.), but it does not attach a criminal penalty for failure to do so. You can, however, advise the person to retain original packaging in the future per statute. You can also report it to DOH.

**Confirm that the type of product matches the physician certification** Product containers from a treatment center will have a firmly affixed and legible label. Compare label information to the certification in the use registry. They have to match.

- name of the treatment center
- name of the patient
- product name
- dosage form
- concentration of THC and CBD
- recommended dose (x 70-day supply = amount allowed)
- a marijuana universal symbol

**Confirm that the amount of product does not exceed physician certification** A patient or caregiver may not possess more than a 70-day supply of marijuana or more than 4 ounces of marijuana in a form for smoking unless DOH has granted an exception for a higher dosage. A physician can request from DOH an exception if they believe an increased amount is necessary to address the patient’s symptoms. In the use registry, you’ll see the form and minimum daily dose that would be sufficient.

Caregivers with more than one patient may possess multiple orders, but each order must be consistent with its physician certification.

If the type of medical marijuana doesn’t match the physician certification, or the amount exceeds the physician certification, you can charge under 893.13.

If a patient or caregiver has transferred medical marijuana to another person who is not the patient or caregiver, both the patient/caregiver transferring the products and the person who acquired the products can be charged under s. 893.13, F.S.

You may investigate further to determine how the person acquired the product. For example:

- Was the product stolen from a patient or caregiver?
- Was there a dispensing mistake at the treatment center?
- Was there a diversion of marijuana by treatment center staff?

Report any violation to DOH.

**Counterfeit product** Each treatment center posts product images on its website. Compare the packaging you encounter to website images to help verify product authenticity. If the products are found to be counterfeit, the person can be charged with a third-degree felony under s. 381.986(12)(k), F.S. Counterfeiting includes devices, containers, seals, or labels made to appear as products of a licensed treatment center.

## Public Use

Use of low-THC cannabis in public is permitted, but not by smoking. Public use of medical marijuana is prohibited. A caregiver cannot administer and a patient cannot use or smoke medical marijuana in the following public places:

- In plain view of or in a place open to the general public
- In a vehicle, an aircraft, a motorboat, or school bus
- In a state, local, or private DOC or DJJ correctional institution
- In the patient's place of employment unless permitted by the employer
- On the grounds of a school.
- In an enclosed indoor workspace (see s. 386.203(5))

Each district school board must have a policy that gives a student who's a qualified patient access to medical marijuana (s. 1006.062(8), F.S.). Schools can designate personnel who can possess, store, and administer medical marijuana for a student who is a patient.

Any party can restrict smoking or vaping marijuana on their private property.

A patient using or a caregiver administering medical marijuana in public can be charged with a first-degree misdemeanor under s. 381.986(12)(c), F.S. either by arrest or a summons to appear.

## Deliveries of Medical Marijuana and Delivery Devices

**Check delivery staff employee identification** Under s. 381.986(8)(g), F.S., treatment center staff transporting medical marijuana or delivery devices must present their employee identification cards to a law enforcement officer upon request. Failure to do so may be reported to DOH, but statute does not provide a criminal penalty.

**Check transportation manifest** Any vehicle transporting marijuana and delivery devices to treatment centers, testing labs, or patients must have a transportation manifest. The document will include:

- Departure date and time
- Name and address of the originating treatment center
- Name and address of the recipient
- Quantity and form of the marijuana or delivery devices transported
- Arrival date and estimated time
- Vehicle make, model, and license plate number
- Name and signature of employees delivering the products

An employee transporting the marijuana or delivery devices must present a copy of the transportation manifest to a law enforcement officer upon request. An employee who fails or refuses to present it can be charged with a second-degree misdemeanor under s. 381.986(12)(h), F.S.



**Monitor delivery procedures** To ensure safe and secure commercial deliveries of medical marijuana and devices, treatment center employees must follow certain procedures:

- Deliver to a patient or caregiver only after verifying their use registry ID card.
- Cannot deliver to a minor or any unauthorized person.
- Lock medical marijuana and delivery devices in a compartment or container within the vehicle.
- Require at least two persons to be in the vehicle.
- Require at least one person to remain in the vehicle at all times while delivering medical marijuana and devices.

Violation of delivery procedures does not carry a criminal penalty but may be reported to DOH, especially if safety and security are compromised.

### **Calls for Service**

If, during a call for service, you see medical marijuana or a delivery device, you can attempt to identify the owner and request their ID card. The product must be in plain view. You cannot manipulate the product in an effort to confirm it is a medical marijuana product.

If the patient or caregiver is present, request their ID card. Confirm the card matches the use registry, and the product matches the physician certification in both type and amount.

If the patient or caregiver is not present, you can contact the owner and hold the product until they verify their authorization.

### **DUI Traffic Stops**

Traffic stop procedures will not change based on the presence of medical marijuana or delivery devices in a vehicle. For a majority of incidents, officers may not have cause to question a driver regarding the contents of the package or devices, unless the driver is showing signs of impairment. The products are labeled and the driver and/or any occupant should have a medical marijuana card which can be used to verify the information contained in the Medical Marijuana use registry.

Suspected DUI traffic stops should be treated like any other DUI stop. Patients are not permitted to operate any vehicle while under the influence of medical marijuana. The fact that the patient has a use registry ID card does not exempt them from arrest, prosecution or excuse them from any requirement under law to submit to a breath, urine, or blood test s. 381.986(14)(f), F.S.).

If patients or caregivers are in possession of an illegal cannabis substance, then violations for illegal substances under ch. 893, F.S. are chargeable offenses. Additional policies for the detailed documentation of the incident, including the patient or caregiver use registry information and the decision for seizure of any products or devices are per individual agency policies. It is recommended that law enforcement officers articulate detailed observations related to impairment or intoxication in field notes, incident reports, or required forms for prosecution of a criminal offense. Remember to protect any personally identifiable health information.

## Reporting to the Department of Health

The Department of Health relies on criminal justice agencies to report violations that are grounds for suspending or revoking registrations. There is no automated notification to DOH that a person has been charged under ch. 893, F.S. or for a violation under s. 381.986, F.S. Therefore, agencies should notify DOH of the charged violations so DOH can suspend or revoke registration of a patient or caregiver who:

- Provides misleading, incorrect, false, or fraudulent information to DOH;
- Obtains a supply of marijuana in an amount greater than is authorized by the certification;
- Falsifies, alters, or otherwise modifies an identification card;
- Fails to timely notify DOH of any changes to his or her qualified patient status;
- Violates the requirements of s. 381.986, F.S. or any rule adopted under s. 381.986, F.S.;
- Commits a violation of ch. 893, F.S. until final disposition of any alleged offense; or
- Cultivates marijuana or acquires, possesses, or delivers marijuana from any person other than a medical marijuana treatment center.

Report violations by email using [MedicalMarijuanaUse@flhealth.gov](mailto:MedicalMarijuanaUse@flhealth.gov). The Department of Health requests that agencies include the words "Confidential pursuant to s. 119.071(2), F.S." in the subject line or body of the email message. That flags the information as confidential and exempt from disclosure.

## Caregiver Violations

In s. 381.986(12)(f), F.S., caregivers are held accountable for a wider range of violations than are patients. This section may single out caregivers because they have more opportunities to exploit patients and divert marijuana.

Caregiver guidelines:

- Must not be a Qualified physician
- Must not be employed by or have an economic interest in a treatment center or testing lab
- Must have no more than one patient unless working for a hospice or being a parent or guardian of more than one minor or more than one disabled adult who is a patient.
- Must not receive compensation other than actual expenses

A caregiver who violates **any provision** in s. 381.986, F.S. commits a second degree misdemeanor for the first offense and a first degree misdemeanor for the second or subsequent offenses.

Also, DOH will revoke a patient or caregiver's registration for any charges under ch. 893, F.S. If you are aware of a charge under ch. 893, F.S., report it to DOH.

## References

### Statutory

#### **Federal Motor Carrier Safety Administration**

Controlled Substances and Alcohol Use and Testing (2010). 49 CFR 382. *Federal Motor Carrier Safety Administration*, <https://www.gpo.gov/fdsys/pkg/CFR-2010-title49-vol5/pdf/CFR-2010-title49-vol5-part382.pdf>

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#### **Florida Administrative Code Chapter 64-4**

Rule Chapter 64-4: <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=64-4>

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Rule Chapter 64ER20-33: <https://www.flrules.org/gateway/ruleNo.asp?id=64ER20-33>

#### **Florida Constitution Article X**

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##### **Title XXIX, Chapter 381 Public Health: General Provisions**

Section 381.986:

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Section 381.987:

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Section 381.988:

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### **Title XXXI, Chapter 435 Employment Screening**

Section 435.04:

[http://www.leg.state.fl.us/Statutes/index.cfm?App\\_mode=Display\\_Statute&Search\\_String=&URL=0400-0499/0435/Sections/0435.04.html](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0435/Sections/0435.04.html)

### **Title XXXII, Chapter 455 Business and Professional Regulation: General Provisions**

Section 455.2281:

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### **Title XXXIII, Chapter 499 Florida Drug and Cosmetic Act**

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### **Title XLVI, Chapter 893 Drug Abuse Prevention and Control**

Chapter 893:

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Section 1006.062:

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