The State of Rhode Island's Medical Marijuana Program: A Report for Lawmakers and the General Public

Medical Marijuana Patients Coalition

January 2020

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Executive Summary

With nearly 2% of the state's population registered as patient cardholders, Rhode Island's medical marijuana law has helped thousands of residents who struggle with serious and debilitating health conditions live a better and more dignified life. When a patient's suffering cannot be addressed through other means, many physicians and families often turn to our state's medical marijuana program. Prescription drugs may not always be effective, and they can pose greater risks for addiction and misuse. The continued availability of medical cannabis as an alternative treatment remains an important public health priority.

Given the importance of medical marijuana for many Rhode Islanders, we must continually assess the state of the program, identify problems, and implement improvements. Based on our observations, testimony from experts, and conversations with patients, the Medical Marijuana Patients Coalition believes significant challenges confront Rhode Island's medical marijuana program and require the attention of state lawmakers and regulatory officials. This report describes what we view as the most serious issues and provides recommendations to address them.

One of the most immediate concerns relate to costs incurred by patients and the lack of consistent access to specific kinds of medical cannabis at an affordable price. Health care costs already represent a significant financial burden for many patients and families, and most who qualify for medical cannabis are paying for other health-related services and treatments. Many medical cannabis patients are unable to work as a result of their condition, and a significant number live at or below the poverty line. For all patients — whether or not they have health insurance or qualify for social assistance programs — costs associated with medical marijuana must be paid out-of-pocket. There are currently no health insurance plans that cover it.

We urge the General Assembly and regulators to address the significant cost burden borne by patients and the problem of affordability in several ways, including reducing or eliminating state-imposed fees, protecting and strengthening the right of patients and caregivers to cultivate marijuana within their own residence, and increasing competitiveness among business operators within the medical marijuana market. We also ask lawmakers to discontinue the practice of producing excess state revenue from medical marijuana taxes and fees. Surplus revenue in the form of taxes and fees on medical marijuana — over and above what it costs to administer and regulate the program — represents an extraction of money from medical marijuana patients. The practice of looking to medical marijuana as a revenue stream for other items in the state budget should not be normalized.

We also highlight other concerns about the current state of Rhode Island's program, including the lack of laboratory testing for medical marijuana products, overly restrictive qualifying criteria, discrimination by state agencies against medical cannabis patients, and exclusion of people with prior drug convictions from the market. Each of these issues is addressed, followed by proposed solutions. The report also provides a summary of notable, recently published scientific studies shedding new light on the efficacy of medical cannabis as well as it's utility in reducing public health issues stemming from the use of opioids and prescription drugs.

Our goal is to encourage thoughtful discussions among legislators, regulators, patients, and all stakeholders. Many lives in our state are directly affected by the policies discussed in this report. We believe, working together, we can make improvements to this vital program.

Introduction

In 2006, Rhode Island passed the Edward O. Hawkins and Thomas C. Slater Medical Marijuana Act to establish the right of qualifying patients who receive a recommendation from their health care practitioner to possess, consume, and cultivate limited amounts of medical cannabis. In its 14 years, the program has undergone significant changes, including an expansion of the state-regulated medical marijuana market involving compassion centers and licensed cultivators.

A 2009 amendment to Rhode Island's medical cannabis law established a legislative oversight committee made up of patients, health professionals, and other stakeholders. The purpose of the oversight committee is to evaluate and make recommendations to the General Assembly regarding patient access, compassion centers, and other pertinent information about the program (see R.I. Gen. Laws, §21-28.6-12(j)). The law directs the committee to publish a report on or before January 1 of every even numbered year. This report, written with contributions from two members of the oversight committee, could be adopted and submitted by the committee to fulfill that purpose.

Over the past two years, the oversight committee has held meetings, collected data and statistics, listened to testimony from regulators and experts, and solicited feedback about the program from key stakeholders, including patients, doctors, and licensed operators in the market. While the conversation about legalizing marijuana for adults' use continues, it is critical that the experiences of medical marijuana patients and the central mission of Rhode Island's medical marijuana law not be overshadowed.

Background and Key Facts

As of December 2019, there were 18,025 patients registered in the medical marijuana program, making up 1.7% of Rhode Island's total population. There are over 800 registered caregivers in the state. Patients and caregivers are permitted to grow up to 12 mature plants and 12 seedlings if accompanied by plant tags provided by the Department of Business Regulation. Department of Health records indicate about a third (5,659) of registered patients qualify for Social Security disability insurance, Medicaid, and/or supplemental security income.

There are currently three medical marijuana dispensaries, referred to as compassion centers, located in Portsmouth, Providence, and Warwick. In 2018, the three compassion centers sold $38.2 million of marijuana, and in early 2019 the total sales for the fiscal year of 2019 were projected to increase 46.6% to $56 million. There are currently 51 licensed medical marijuana cultivators across the state.

Article 15 of the FY 2020 budget approved by state lawmakers in 2019 made significant changes to the medical marijuana program. It expanded the number of available compassion center licenses from three to nine and the licensing fee for compassion centers doubled,

from $250,000 to $500,000 per license, which is by far the highest fee for an operator in any state with legalized medical marijuana. The Department of Business Regulation is not yet accepting applications for the six new compassion center licenses and has closed applications for licensed cultivators.

<u>**Affordability and Access to Medical Marijuana**</u>

- **Patients cardholders face a significant financial burden.**

For many patient cardholders, the cost of medical marijuana is a significant barrier to accessing the products they need to alleviate their health condition. Medical marijuana is not covered by Medicaid or any other health insurance plan, and all costs are out-of-pocket. Many patients testify at public hearings that prices at the compassion centers are unaffordable for them. In addition to the cost of medical marijuana, patient cardholders have other expenses such as application fees, registration renewal fees, and paying for transportation to compassion centers (which is often farther away than a traditional pharmacy). By imposing "plant tag fees," the Department of Business Regulation also increases costs for patients who wish to cultivate their own medical marijuana securely at home. For people already struggling with debilitating health problems, these issues of affordability are compounded by financial burdens caused by rising health care costs, which affect virtually all patients in our health care system.

Though compassion centers are "not for profit," there is no mechanism within state law or regulations to control prices or ensure medical marijuana products are affordable for low-income patients. Also concerning is the fact that the state imposes a 4% surcharge in addition to the normal 7% sales tax on every medical marijuana transaction. The General Assembly's most recent budget also increased the annual registration fees for compassion centers to $500,000. If compassion centers are able to pay this additional annual licensing fee, it suggests current levels of revenue more than cover their operating costs. If the political will exists, it would be possible to reduce the cost burden associated with medical marijuana, especially for patients already facing financial hardships.

- **The list of qualifying conditions for medical marijuana prevents access for some patients who could benefit.**

Under Rhode Island law, a patient must have a "debilitating medical condition" in order to register as a medical marijuana patient. The law defines the following conditions as "debilitating medical conditions": cancer, glaucoma, HIV, AIDS, hepatitis C, PTSD, or the treatment of these conditions. Other conditions can qualify as a "debilitating medical condition" if it causes any of the following symptoms: wasting syndrome, severe and debilitating chronic pain, severe nausea, seizures, severe and persistent muscle spasms, or agitation caused by Alzheimer's Disease. The law also permits additional conditions or symptoms of conditions to be approved by the Department of Health after a public hearing.

There are only two ways to amend the list of qualifying conditions in the current law: by petitioning the Department of Health or passing legislation. Both of these processes are time

and resource intensive. Many patients and their families do not have the capacity to mount this kind of effort.

This system for evaluating "debilitating medical conditions" is an insurmountable barrier for some patients who would otherwise benefit from access to medical marijuana. For example, rare conditions that are not specifically listed under the statutes or regulations, or that produce symptoms outside of what is listed but that could still be alleviated by medical marijuana, are completely excluded. The current list of qualifying conditions also includes subjective terms such as "severe nausea." Some doctors, fearing scrutiny from regulators, may disregard their better medical judgment and err more conservatively in determining what constitutes a "severe" condition in order to avoid concerns that they are violating the law. Restricting access to the medical marijuana based on a list of qualifying conditions unnecessarily prevents some patients who could benefit from participating in the program.

Research into medical cannabis is rapidly evolving, and given the relative safety of cannabis compared with many other drugs, there is low risk in allowing doctors to use their own discretion rather than following a pre-specified list of qualifying conditions that is rarely updated.

- **The number of licensed compassion centers is insufficient.**

Rhode Island currently has three licensed compassion centers for the entire state. For patients in more rural areas, the distance they must travel to visit a compassion center is burdensome. For example, a patient living in Westerly has to travel almost an hour and a half round trip to visit a compassion center and return home. The addition of six new compassion center licenses in the state will improve access to compassion centers, but not enough. Rhode Island will still maintain one of the highest patient-to-dispensary ratios (2,000 patients for every dispensary) of any medical marijuana state in the nation. Oklahoma's program, for example, has licensed one medical marijuana business for every 29 patients.

- **Restrictions on home delivery create unnecessary barriers to convenient access.**

In April of 2019 the Department of Business Regulation released regulations on home delivery for medical marijuana products from compassion centers. Under the regulations, delivery to a Rhode Island registered patient is only permitted under restrictive conditions. In order to qualify, a patient must fall into one of the following categories: (1) the patient has no designated caregiver or authorized purchaser or (2) the patient is eligible for hospice, or is undergoing chemotherapy or radiation or (3) the patient is homebound and cannot travel or has a handicap parking permit. If a patient qualifies because they are eligible for hospice, are undergoing chemotherapy or radiation, are homebound or have a handicap parking permit, the patient must have a letter from a doctor in Rhode Island in order to qualify for home delivery. Finally, there is an additional process required for patients to register with the compassion center in order to receive deliveries. These restrictions place an unnecessary burden on patients and ignore the daily realities of patients' needs. For example, even if a patient has a designated caregiver, there may be times when home delivery could provide an important lifeline if there is a crop failure. In addition, the requirement of a doctor's note for

certain qualifications for home delivery creates additional and unnecessary red tape for patients who are already struggling with debilitating health burdens.

- **Physical accessibility for patients with disabilities and mobility challenges must be improved.**

Patients have reported that some physical spaces on the premises of existing compassion centers do not accommodate their mobility needs. For facilities already built, as well as new compassion centers to be licensed, the Department of Business Regulation should adopt stricter guidelines and regulations to ensure that compassion centers are easily accessible to all patients.

- **Recommendations:**

1. Establish a cost reduction program for low-income patients and those facing significant hardship. For example, the medical marijuana law could be amended to establish a hardship designation, which could be visibly marked on patients' identification cards. Qualification for a hardship designation could automatically apply to patients who receive SSI, SSDI, or Medicaid. The Department of Health may be able to establish other ways to demonstrate a financial hardship, too. Compassion centers could then be required to offer a 30% discount on all sales to patients with a hardship designation.
2. Significantly lower patient application and renewal fees (to the extent possible without jeopardizing essential administrative funding for the program).
3. Repeal the "plant tag" system for patients and caregivers who cultivate medical marijuana securely in their homes.
4. Amend the definition of "debilitating medical condition" to eliminate the specific list of qualifying conditions and give practitioners more discretion.
5. Eliminate the statutorily defined cap on the number of compassion center licenses and open more facilities expeditiously.
6. Remove current requirements necessary to enroll in home delivery programs.
7. Adopt stricter regulations governing the physical design of compassion centers to ensure they are adequately accessible to people with mobility challenges.

Civil and Legal Protections for Cardholders

In addition to mere immunity from criminal liability, patient cardholders should also enjoy basic civil rights and protection from discrimination. Currently, Rhode Island law prohibits schools, employers, and landlords from penalizing an individual for their status as a cardholder, except in particular situations. Landlords may, for example, disallow patients from vaporizing or smoking medical marijuana.

Civil protections for medical marijuana patients and cardholders do not currently address discriminatory actions taken by state agencies or officials, however. For example, the Department of Children, Youth, and Families, is not prohibited in discriminating against medical marijuana cardholders, and may use an individual's status in the program as a relevant fact in determining matters of guardianship and child welfare. Residents in the

Rhode Island Veterans Home Community Living Center have also been denied their rights to use medical marijuana. There is no legitimate basis for treating a medical marijuana patient in full compliance with the law differently from a person lawfully using a prescription medication. There is also a general lack of awareness in the state about what rights registered cardholders possess, and it would be beneficial to make this information more easily accessible.

- **Recommendations:**

1. Amend the medical marijuana law to include language prohibiting state agencies and officials from discriminating against or penalizing an individual for their status as a medical marijuana cardholder.
2. Create and publish an easily accessible document outlining patients' rights on a government website.

Industry Regulations

- **Discriminatory barriers to market entry are codified in the current law.**

Competition and access to the market is hindered when it comes to who is able to obtain a license to operate within Rhode Island's medical marijuana industry. The existing law significantly narrows the potential applicant pool. Before a compassion center applicant may begin operating, a license fee of $500,000 must be paid to the state. While other states' medical marijuana programs require a licensing fee for dispensaries and cultivators, none are as exorbitant as Rhode Island's. Typically, annual medical marijuana licensing fees range from $5,000 to $25,000. In the rankings, Rhode Island's fees are number one, followed by the $200,000 fees in Pennsylvania and Ohio. Many operators who might otherwise be qualified and capable of operating a compassion center are therefore automatically barred from entering the market because they lack tremendous levels of investment capital.

The law further restricts who may own, manage, or serve on the board of a medical marijuana establishment. Anyone who has been convicted of a felony drug offense is prohibited from ever operating or having a significant role in a compassion center or licensed cultivator (R.I. Gen. Laws, §21-28.6-12(i)(6)) and §21-28.6-16(k)(2)). While a few other states also maintain similar discriminations against people with prior drug records, others place a limit on how far back the offense took place (e.g. ten years prior in Nevada and Washington). Massachusetts' marijuana laws promote and encourage people with prior drug offenses to participate in the legal marijuana economy. Rhode Island's automatic disqualification of applicants who have been convicted of a drug offense is regressive and further punishes individuals who have already paid their debt to society. Furthermore, due to significant racial disparities in drug arrests, there is almost certainly a racially discriminate effect on who is able to access licenses as a result of this policy.

- **The industry still lacks a third-party system for laboratory testing of products.**

Patients and their allies have long advocated for the establishment of laboratory testing to ensure the safety of marijuana products and the accuracy of labels, but Rhode Island remains

one of only a handful of medical marijuana states where third-party laboratory testing for products has not yet been implemented. Rhode Island's medical marijuana law states that testing facilities are permitted and are to be jointly regulated by the Departments of Health and Business Regulation, but there have been no recent public updates in over a year. The Department of Health adopted regulations to govern medical marijuana testing labs in May of 2018 and later announced they were accepting applications for licenses in September of the same year. But there have been no public announcements from either department regarding the status of these applications or when testing facilities are expected to open. Patients deserve to know what the products they consume contain and that they are safe. Furthermore, the current regulations do not accommodate patients or caregivers who cultivate medical marijuana and wish to have their own homegrown products tested.

- **Recommendations:**

  1. Amend the medical marijuana law to permit more dispensaries and revert the annual licensing fee from the current $500,000 to the previous level of $5,000 a year.
  2. Allow and encourage the participation of people with prior drug convictions in the medical marijuana industry.
  3. Make third-party laboratory testing mandatory for all products sold from compassion centers and impose a legally enforceable deadline for regulators to implement the testing program.

Home Cultivation, Gifting, and Possession Allowances

Rhode Island's medical marijuana program has allowed home cultivation by patients and their appointed caregivers since its inception in 2006. Until the first compassion center opened in 2013, home cultivation was the only legal source of medical marijuana for registered patients. As licenses have remained restricted to only three dispensaries in the state, home cultivation has remained a lifeline for many patients and is sometimes the best source of medicine suited for a patient's particular health condition and needs. Similarly, allowing cardholders who grow to "gift" or provide medical marijuana to other patient cardholders free of charge has been a crucial provision in the law.

In recent years, some state officials have publicly condemned these provisions, claimed they are linked with public safety problems, and advocated for their repeal. Though there have been incidents in which a home cultivation site was linked to some kind of harm, the evidence suggests that the vast majority of patients have cultivated responsibly and safely. While the state should encourage patients and caregivers to take precautions and cultivate medical marijuana responsibly, the right to home cultivation should be maintained.

Under Rhode Island's current law, patients are permitted to cultivate up to 12 mature marijuana plants. However, a patient may only possess up to two and a half ounces of dried marijuana or an equivalent amount in other forms. Plant yields are often difficult to predict, and in some cases, a patient may produce an amount greater than the possession limit from plants cultivated in their residence. This incongruity can create uncertainty and confusion for patients who cultivate their own medical marijuana while wanting to adhere to the law.

- **Recommendations:**

1. Recognize the value of home cultivation and gifting as a source of medical marijuana for many patients in the program and cease efforts to ban or discourage it.
2. Amend the law to permit a greater amount (e.g. 16 ounces) of usable medical marijuana if it has been cultivated in the cardholders' residence, provided the excess is safely stored in the residence and not possessed in a public place.

- **<u>Patient Outreach and Communication</u>**

State officials must do a better job of keeping patients, caregivers, and other participants in the medical marijuana program updated and informed about current laws and regulations as well as recent and upcoming changes.

Many who contributed to this report closely follow the political process and frequently check state websites for information about the program, and even we are often confused or uncertain about what is happening with the program. Because the medical marijuana law exists for the benefit of patients, it is imperative that patients be informed about changes that may affect them. Much of the existing information on the Department of Health's website is out-of-date, and it is frequently the case that statutory deadlines are not adhered to. For example, in the most recent amendment to the law, the Department of Business Regulation is directed to update state forms and rules to implement the statutory requirement that only registered caregivers may obtain the necessary plant tags to continue cultivating. Under this change, patients would be required to register as a caregiver if they wish to continue cultivating for themselves. These kinds of complicated regulatory changes must be more effectively communicated to patients to encourage compliance and minimize confusion.

- **Recommendations:**

1. Establish a patient "hotline" operated jointly by a state staff person who is knowledgeable about all relevant medical marijuana laws and regulations.
2. Require regulators to promptly notify all cardholders by mail (or electronically if a cardholder opts out of physical mailings) of any and all changes to rules and regulations in the program, with at least one mailed letter summarizing current rules sent to cardholders each year following the conclusion of the General Assembly session.
3. Consult with patient advocates to redesign medical marijuana pages on state-controlled websites.
4. Update medical marijuana pages on state websites at least once every three months.

- **Conclusion**

Each of us who contributed to this report is dedicated to promoting the success of Rhode Island's medical marijuana program. We have worked diligently to identify key issues and propose workable solutions, which we hope regulators and legislators will consider and ultimately adopt. More broadly, while marijuana law reforms continue to be considered at the state and federal level, we urge policymakers not to forget the original reason for Rhode Island's medical marijuana law, which was to implement a compassionate solution for patients who need access to a medicine that has long been criminalized. We hope this report will inspire others to join us and contribute to a renewed effort to improve an important program on which so many Rhode Islanders' quality of life depends.

Appendix: Recent Scientific Studies on Medical Marijuana

- **National Academies of Sciences, Engineering, and Medicine. 2017. The health effects of cannabis and cannabinoids: The current state of evidence and recommendations for research. Washington, DC: The National Academies Press.**
  https://www.nap.edu/read/24625/chapter/1

The National Academies of Sciences (NAS) released a landmark report in 2017 that reviewed over 10,000 academic studies on the effects of cannabis. It found "conclusive or substantial evidence" that cannabis is effective for the treatment of chronic pain, nausea and vomiting, and multiple sclerosis. It also found evidence that cannabis is effective for improving sleep, anxiety, PTSD, and traumatic brain injury.

- **Bradford AC, et al. Association Between US State Medical Cannabis Laws and Opioid Prescribing in the Medicare Part D Population.** ***JAMA Intern Med*****. 2018; 178(5):667–672.**
  https://jamanetwork.com/journals/jamainternalmedicine/article-abstract/2676999

"This longitudinal analysis of Medicare Part D found that prescriptions filled for all opioids decreased by 2.11 million daily doses per year from an average of 23.08 million daily doses per year when a state instituted any medical cannabis law. Prescriptions for all opioids decreased by 3.742 million daily doses per year when medical cannabis dispensaries opened."

- **Abuhasira R, et al. Epidemiological characteristics, safety and efficacy of medical cannabis in the elderly.** ***European Journal of Internal Medicine*****. 2018; 49:44-50.**
  https://www.sciencedirect.com/science/article/abs/pii/S0953620518300190

"Our study finds that the therapeutic use of cannabis is safe and efficacious in the elderly population. Cannabis use may decrease the use of other prescription medicines, including opioids. Gathering more evidence-based data, including data from double-blind randomized-controlled trials, in this special population is imperative."

- **Schleider LBL et al. Real life Experience of Medical Cannabis Treatment in Autism: Analysis of Safety and Efficacy.** ***Scientific Reports*****. 2019; 9(200).**
  https://www.nature.com/articles/s41598-018-37570-y.pdf

"Cannabis in ASD [autism spectrum disorder] patients appears to be well tolerated, safe and effective option to relieve symptoms associated with ASD."

- **Purcell C, et al. Reduction of Benzodiazepine Use in Patients Prescribed Medical Cannabis.** ***Cannabis and Cannabinoid Research*****. 2019; 4(3).**
  https://doi.org/10.1089/can.2018.0020

"Within a cohort of 146 patients initiated on medical cannabis therapy, 45.2% patients successfully discontinued their pre-existing benzodiazepine therapy. This observation merits

further investigation into the risks and benefits of the therapeutic use of medical cannabis and its role relating to benzodiazepine use."

- **Cuttler C, et al. Short- and Long-Term Effects of Cannabis on Headache and Migraine.** ***The Journal of Pain*. 2019.**
  https://www.jpain.org/article/S1526-5900(19)30848-X/fulltext

"Inhaled cannabis reduces self-reported headache and migraine severity by approximately 50% …. its effectiveness appears to diminish across time and patients appear to use larger doses across time, suggesting tolerance to these effects may develop with continued use."

- **Anderson DM, et al. Association of Marijuana Laws With Teen Marijuana Use.** ***The Journal of the American Medical Association*. 2019.**
  https://jamanetwork.com/journals/jamapediatrics/fullarticle/2737637

"Consistent with the results of previous researchers, there was no evidence that the legalization of medical marijuana encourages marijuana use among youth."

- **Santaella-Tenorio J, et al. US Traffic Fatalities, 1985–2014, and Their Relationship to Medical Marijuana Laws.** ***American Journal of Public Health.*** **2017.**
  https://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2016.303577

"Both MMLs [medical marijuana laws] and dispensaries were associated with reductions in traffic fatalities, especially among those aged 25 to 44 years."