



# Members Brief

An informational brief prepared by the LSC staff for members and staff of the Ohio General Assembly

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Volume 134 Issue 67  
December 22, 2022

## Ohio’s Medical Marijuana Control Program

The Ohio Medical Marijuana Control Program regulates the production, sale, and use of medical marijuana in this state. The program regulates every aspect of the supply chain, from the cultivators who grow medical marijuana, to the patients who purchase and use it. Under Ohio law, three state agencies are responsible for regulating various aspects of the program: the State Medical Board, the State Board of Pharmacy, and the Department of Commerce.

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### Medical Marijuana Control Program

Ohio’s Medical Marijuana Control Program (MMCP) was authorized in 2016,<sup>1</sup> and the first sales of medical marijuana in Ohio took place January 16, 2019. The MMCP allows individuals with specified medical conditions to purchase and use medical marijuana. Ohio law gives three

<sup>1</sup> H.B. 123 of the 131<sup>st</sup> General Assembly.

state agencies the authority to regulate various aspects of the program. The State Medical Board is responsible for certifying physicians to recommend medical marijuana to patients and adding qualifying medical conditions for which medical marijuana may be recommended. The State Board of Pharmacy regulates medical marijuana retail dispensaries, registers medical marijuana patients and caregivers, and approves new forms of medical marijuana. Finally, the Department of Commerce is responsible for licensing medical marijuana cultivators, processors, and testing laboratories.

## Patient use of medical marijuana

### Qualifying medical conditions

Under Ohio law, only a patient diagnosed with a qualifying medical condition may use, possess, or purchase medical marijuana.<sup>2</sup> There are now 25 qualifying medical conditions. The law specifies 21 conditions:<sup>3</sup>

- AIDS
- Alzheimer’s Disease
- Amyotrophic Lateral Sclerosis (Lou Gehrig’s Disease)
- Cancer
- Chronic Traumatic Encephalopathy
- Crohn’s Disease
- Epilepsy or other seizure disorders
- Fibromyalgia
- Glaucoma
- Hepatitis C
- Inflammatory Bowel Disease
- Multiple Sclerosis
- Pain that is either chronic and severe or intractable
- Parkinson’s Disease
- Positive status for HIV
- Post-Traumatic Stress Disorder
- Sickle Cell Anemia
- Spinal Cord Disease or Injury
- Traumatic Brain Injury
- Tourette’s Syndrome
- Ulcerative Colitis

In 2020, the Medical Board added cachexia, also known as wasting syndrome. In 2021, the Board added Huntington’s disease, terminal illness, and spasticity.<sup>4</sup> Individuals may petition the Board to approve a condition or disease as a qualifying medical condition.<sup>5</sup> The Board establishes yearly submission periods for accepting petitions, which must be filed electronically at [medicalmarijuana.ohio.gov](https://medicalmarijuana.ohio.gov). The Board has rejected other conditions, including autism spectrum disorder, opioid use disorder, depression, insomnia, restless leg syndrome, and anxiety. The current submission period opened November 1, 2022, and will close December 31, 2022.

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<sup>2</sup> R.C. 3796.01, 3796.08, and 3796.22.

<sup>3</sup> R.C. 3796.01(A)(6).

<sup>4</sup> State Medical Board, [Recent News, Three Medical Marijuana Qualifying Conditions Approved](#), which may be accessed by conducting a search of “Recent News” on the Medical Board website: [med.ohio.gov](https://med.ohio.gov).

<sup>5</sup> R.C. 4731.302.

Historically, pain is by far the most common qualifying medical condition for which patients seek treatment with medical marijuana. The other most common qualifying medical conditions include post-traumatic stress disorder, fibromyalgia, and cancer.<sup>6</sup>

### **Patient and Caregiver Registry**

A patient seeking to use medical marijuana must apply to register with the State Board of Pharmacy. A physician who holds a certificate to recommend medical marijuana and is treating the patient must submit the application on the patient's behalf.<sup>7</sup>

To be eligible to register, a patient must (1) be diagnosed with a qualifying medical condition, (2) have undergone an examination by a physician who is certified by the Medical Board to recommend medical marijuana, and (3) have an expectation of receiving care from the physician on an ongoing basis.<sup>8</sup> Before the COVID-19 pandemic, a physician was required to conduct an in-person examination of a patient. On March 18, 2020, the Medical Board authorized physicians to use telemedicine in place of in-person visits to make recommendations and renewals for medical marijuana. H.B. 122 of the 134<sup>th</sup> General Assembly made this change permanent.<sup>9</sup>

If the physician has performed the examination, has an expectation of providing ongoing care, has requested a patient report from the Pharmacy Board's Ohio Automated Rx Reporting System (OARRS), and has discussed with the patient the risks and benefits of treatment with marijuana, the physician may submit a recommendation to the Patient and Caregiver Registry on the patient's behalf. The registration fee is \$50 per year; however, patients who qualify for indigent or veteran status may qualify for a 50% fee reduction.<sup>10</sup> Proceeds from patient and caregiver registration fees are deposited to the Medical Marijuana Control Program Fund (Fund 5SY0) established by the Controlling Board in August 2018 and used by the Pharmacy Board and the Department of Commerce to administer the MMCP. Between December 2018 and July 2022, the Board of Pharmacy collected nearly \$22.4 million in patient and caregiver fees.

A registered patient receives a registration card. The patient needs this card to purchase medical marijuana from a licensed dispensary and must carry it whenever in possession of medical marijuana.<sup>11</sup> In order to continue participating in the program, a patient must undergo at least one visit with a certified physician every year.

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<sup>6</sup> State Board of Pharmacy [Medical Marijuana Advisory Committee Updates \(PDF\)](#) (August 2021), pp. 5-6, which may be accessed by conducting a search for the August 2021 meeting of the Medical Marijuana Advisory Committee page on Ohio's medical marijuana website: [medicalmarijuana.ohio.gov](http://medicalmarijuana.ohio.gov).

<sup>7</sup> R.C. 3796.08.

<sup>8</sup> R.C. 3796.08 and 4731.30.

<sup>9</sup> R.C. 4731.30

<sup>10</sup> State Board of Pharmacy, [Quick Reference Guide: Registering with Indigent/Veteran Status \(PDF\)](#) (updated March 4, 2020), which may be accessed from the "Patient and Caregivers" page on the website: [medicalmarijuana.ohio.gov](http://medicalmarijuana.ohio.gov).

<sup>11</sup> Ohio Administrative Code (O.A.C.) 3796:7-2-05.

As of October 31, 2022:

- Physicians holding active certificates to recommend had made 606,035 recommendations to use medical marijuana.
- 317,018 patients had completed the registration necessary to purchase and use medical marijuana. Of these, 19,532 (6.2%) had veteran status, 20,784 (6.6%) had indigent status, and 1,209 (0.4%) had a terminal diagnosis.
- 294,956 unique patients actually purchased medical marijuana.
- 165,163 patients had both an active registration and an active recommendation.<sup>12</sup>

The number of patients with both an active registration and an active recommendation for medical marijuana grew by more than 44% between August 2021 and August 2022. The Ohio State University's Drug Enforcement and Policy Center has conducted studies of medical marijuana patients and prospective patients. The price of medical marijuana continues to be the leading reason why patients do not use medical marijuana. Patient satisfaction levels with the program have continued to rise, with a majority of surveyed patients now saying they are "extremely satisfied" or "somewhat satisfied" with the program.<sup>13</sup> According to the Department of Commerce, as of November 27, 2022, the average price of medical marijuana in Ohio is \$7.76 per gram (for plant sales) and \$36.67 per unit (for manufactured sales).<sup>14</sup> This has fallen from a high of \$48 and \$100, respectively, when initial sales were launched.

### **Legal forms, methods, and amounts of consumption**

The MMCP limits what forms of medical marijuana a patient may purchase and what methods of consumption a patient may use. Permissible forms include:

- Oils, tinctures, capsules, or edible marijuana for oral consumption;
- Patches for transdermal administration or lotions, creams, or ointments for topical application;
- Metered oil, solid preparation, or plant material for vaporization;
- Plant material for administration with the use of vaporizing devices; and

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<sup>12</sup> Medical Marijuana Control Program, [Program Update: By The Numbers \(PDF\)](#) (updated November 29, 2022), which may be accessed by searching "Program Update" on the website: [medicalmarijuana.ohio.gov](http://medicalmarijuana.ohio.gov).

<sup>13</sup> Ohio State University, Drug Enforcement and Policy Center, [Ohio Medical Marijuana Control Program at Four Years Evaluating Satisfaction and Perception \(PDF\)](#), (September 2022), which may be accessed on the Ohio Medical Marijuana Control Program Survey Page on the OSU Website: [u.osu.edu/ommcpsurvey](http://u.osu.edu/ommcpsurvey).

<sup>14</sup> Medical Marijuana Control Program, Program Update: By The Numbers (updated November 29, 2022).

- Strips, sprays, salves, dissolving tablets, lozenges, tinctures, and films for sublingual (under the tongue) administration.<sup>15</sup>

Patients are not permitted to smoke medical marijuana or burn the plant material. Further, they may not vape marijuana resin or other extracts, and vaping devices must not be capable of being heated to a temperature at which marijuana plant material can burn.<sup>16</sup> Individuals may petition the Board of Pharmacy to approve additional forms or methods of using medical marijuana by visiting the website: [medicalmarijuana.ohio.gov](http://medicalmarijuana.ohio.gov).<sup>17</sup>

Ohio law restricts a patient's possession of medical marijuana to a 90-day supply.<sup>18</sup> In April 2020, the Pharmacy Board simplified the way a patient's supply is calculated by dividing it into two 45-day fill periods based on the patient's current, active recommendation.

### **Impact on employment**

An employer has no obligation to permit or accommodate an individual's use, possession, or distribution of medical marijuana. An employer may fire, refuse to hire, discipline, or otherwise take an adverse employment action against an individual because of that conduct, and the individual cannot sue the employer for taking any of those actions as they relate to medical marijuana. The MMCP also does not prohibit an employer from establishing a drug testing policy, drug-free workplace policy, or zero-tolerance drug policy.<sup>19</sup>

An individual who is fired for using medical marijuana in violation of an employer's drug-free workplace policy, zero-tolerance policy, or other formal policy is considered to have been fired for just cause and is not eligible for unemployment benefits.<sup>20</sup> An individual or the individual's dependent is ineligible for compensation and benefits under Worker's Compensation if the proximate cause of the workplace injury, occupational disease, or death was the individual being under the influence of marijuana, regardless of whether the individual was using marijuana under a doctor's care.<sup>21</sup>

### **Caregivers**

Registered caregivers may purchase, possess, and administer a patient's medical marijuana. Much like a patient, a caregiver must be entered into the Patient and Caregiver Registry by a certified physician. The annual registration fee for caregivers is \$25. The caregiver's registration

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<sup>15</sup> Ohio Medical Marijuana Control Program, [Patient & Caregiver Newsletter – November 2021 \(PDF\)](#), which may be accessed by searching the "Patient & Caregivers" page on the website: [medicalmarijuana.ohio.gov](http://medicalmarijuana.ohio.gov).

<sup>16</sup> R.C. 3796.05 and O.A.C. 3796:8-2.

<sup>17</sup> R.C. 3796.061.

<sup>18</sup> R.C. 3796.22.

<sup>19</sup> R.C. 3796.28(A).

<sup>20</sup> R.C. 3796.28(B) and 4141.29.

<sup>21</sup> R.C. 4123.54.

must be linked to the registered patient.<sup>22</sup> In general, an individual may not serve as a caregiver for more than two patients.<sup>23</sup> As of October 31, 2022, there are 32,202 registered caregivers in Ohio.

## Physician certificate to recommend

Only a physician who is certified by the Medical Board may recommend the use of medical marijuana. A physician seeking this certification must apply to the Board. To qualify for a certificate to recommend, a physician must meet several requirements that include, in part, having been granted access to OARRS, having an active registration with the U.S. Drug Enforcement Administration, and not having any disciplinary actions taken related to inappropriate prescribing, dispensing, administering, supplying, or selling a controlled substance or dangerous drug. Additionally, to renew the certificate, a physician must complete at least two hours of continuing medical education in diagnosing qualifying medical conditions and treating them with medical marijuana.

A physician with a certificate to recommend is prohibited from having an ownership interest in or other compensation agreement with any licensed medical marijuana entity.<sup>24</sup> As of November 9, 2022, the Medical Board has issued 656 certificates to recommend.<sup>25</sup> This represents a 3.8% decline from a high of 681 certificates to recommend in April 2021.

## Medical marijuana cultivators

Medical marijuana cultivators grow marijuana for the MMCP. The Department of Commerce licenses cultivators. Cultivators are divided into two categories, based on the size of the growing operation.<sup>26</sup> As of November 16, 2022, the Department has issued 23 Level I provisional licenses, 19 of which have received a certificate of operation (full licensure), and 14 Level II provisional licenses, 12 of which have received certificates of operation. In September 2021, the Department announced that existing cultivators that have complied with current rules and regulations will be able to apply to double their grow space. As of September 2022, three Level I and seven Level II cultivators have requested to expand.

Cultivator licensing fees are as follows:

	Level I	Level II
Application fee	\$20,000	\$2,000
Initial license fee	\$180,000	\$18,000
Annual license renewal fee	\$200,000	\$20,000

<sup>22</sup> R.C. 3796.08.

<sup>23</sup> O.A.C. 3796:7-2-02.

<sup>24</sup> O.A.C. 4731-32-02.

<sup>25</sup> Medical Marijuana Control Program, Program Update: By The Numbers (updated November 29, 2022).

<sup>26</sup> O.A.C. 3796:2-1-01.

Medical marijuana cultivators must comply with numerous regulations, including adherence to a quality assurance plan established by the cultivator, proper disposal of medical marijuana waste, ensuring proper storage of medical marijuana and facility security, and keeping proper records regarding the medical marijuana cultivated at the facility.<sup>27</sup> A license holder is prohibited from cultivating medical marijuana for personal, family, or household use.<sup>28</sup>

## Medical marijuana processors

Medical marijuana processors manufacture medical marijuana products that are distributed to medical marijuana dispensaries. There are three different types of processors: standalone processors, vertically integrated facilities, and plant-only processors.<sup>29</sup> As of October 20, 2022, the Department has issued 46 provisional licenses. Of those, 43 have received certificates of operation. The processor application fee is \$10,000, and the certificate of operation fee is \$90,000. The annual license renewal fee is \$100,000.

Like cultivators, processors must adhere to the Department's rules regarding adherence to a quality assurance plan established by the processor, proper disposal of medical marijuana waste, ensuring proper storage of medical marijuana and facility security, and keeping proper records regarding the medical marijuana products processed at the facility.<sup>30</sup>

## Testing laboratories

Testing laboratories include both universities and private laboratories licensed by the Department. The laboratory application fee is \$2,000, and the certificate of operation fee is \$18,000, with an annual renewal fee of \$20,000. Currently, the Department has issued ten provisional licenses, and eight of those have received certificates of operation.

## Medical marijuana dispensaries

### Licensing

Only dispensaries licensed by the Pharmacy Board may sell medical marijuana.<sup>31</sup> The application fee is \$5,000, and each dispensary that receives a license must pay a \$70,000 biennial renewal fee.<sup>32</sup> Initially, the Board specified that, until September 8, 2018, no more than 60 dispensaries could receive provisional licenses. As of December 6, 2022, the Board has issued 59 certificates of operation.<sup>33</sup>

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<sup>27</sup> O.A.C. 3796:2-2-01 to 3796:2-2-08.

<sup>28</sup> R.C. 3796.18(B).

<sup>29</sup> Ohio Medical Marijuana Control Program, [Processors](https://www.medicalmarijuana.ohio.gov), which may be accessed from the website: [medicalmarijuana.ohio.gov](https://www.medicalmarijuana.ohio.gov).

<sup>30</sup> O.A.C. 3796:3-2-01 to 3796:3-2-08.

<sup>31</sup> R.C. 3796.10.

<sup>32</sup> O.A.C. 3796:6-5-01.

<sup>33</sup> Medical Marijuana Control Program, Program Update: By The Numbers (updated December 6, 2022).

For purposes of licensing these original dispensaries, the Board divided the state into four regions, which were further divided into districts within each region. The Board initially established a maximum number of dispensaries that could operate in each region.

Region	Maximum Number of Dispensaries
Northeast	18
Northwest	10
Southeast	17
Southwest	15

By rule, the Pharmacy Board, on a biennial basis, must consider the state population, the number of patients seeking to use medical marijuana, and the geographical distribution of existing dispensary sites to determine whether additional dispensaries are needed. If the Board determines additional licensed dispensaries are needed, it may issue a request for applications.<sup>34</sup> On April 19, 2021, the Board authorized the issuance of up to 73 additional provisional dispensary licenses. On May 16, 2022, the Board issued 70 of those 73 provisional licenses. These provisional dispensaries have until February 2023 to become fully operational. A 71<sup>st</sup> provisional license was issued on August 9, 2022, and a 72<sup>nd</sup> was issued on October 4, 2022. Rather than award provisional licenses by region, awards were made instead by districts within the regions.<sup>35</sup>

There are restrictions for where a medical marijuana dispensary may be located. Ohio law prohibits any dispensary from being located within 500 feet of a school, church, public library, public playground, or public park.<sup>36</sup> Additionally, a municipal corporation or a board of township trustees may prohibit or limit the number of dispensaries located within the municipal corporation or the township's unincorporated territory.<sup>37</sup> While not required by statute, the Pharmacy Board also licenses three categories of dispensary employees: associated key employees, key employees, and support employees.<sup>38</sup>

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<sup>34</sup> O.A.C. 3796:6-2-05.

<sup>35</sup> State Board of Pharmacy, [Request for Dispensary Applications \(RFA II\) Provisional Dispensary License FAQs \(PDF\)](#) (issued May 16, 2022, and updated October 13, 2022), which may be accessed from the "Dispensaries" page on the website: [medicalmarijuana.ohio.gov](https://medicalmarijuana.ohio.gov).

<sup>36</sup> R.C. 3796.30.

<sup>37</sup> R.C. 3796.29.

<sup>38</sup> O.A.C. 3796:6-2-07 and 3796:6-2-08.



## Sales

As of November 27, 2022, 130,288 pounds of plant material and 12,110,472 units of manufactured products had been sold at Ohio's medical marijuana dispensaries. These sales have come from 8,339,993 unique transactions totaling \$1.09 billion in sales.<sup>39</sup>

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<sup>39</sup> Medical Marijuana Control Program, Program Update: By The Numbers (updated November 29, 2022).