

## Frequently Asked Questions – Health Care Providers

### 1. What are the laws established for the medical marijuana program?

North Dakota Century Code (NDCC) Chapter 19-24.1

[NDCC 19-24.1](#)

North Dakota Administrative Code (NDAC) Chapter 33-44-01 (proposed)

[NDAC 33-44-01 \(proposed\)](#)

### 2. What are the federal laws regarding marijuana?

Marijuana remains an illegal drug under the Controlled Substances Act. North Dakota law does not make the use of usable marijuana under the medical marijuana program legal under federal law, and does not create a defense to a federal prosecution for a drug related offense.

### 3. What is the status of the implementation of the North Dakota medical marijuana program?

The Division of Medical Marijuana is dedicated to ensuring that the public is kept up-to-date on program implementation progress. Program updates and any other important information regarding implementation can be found on the Division's website: [www.ndhealth.gov/MM/](http://www.ndhealth.gov/MM/)

Look for the "Subscribe/Unsubscribe to Updates" button on the main page of the Division's website to register your email address to receive notification when updates are made to the website.

### 4. What is a health care provider's role in the medical marijuana program?

Health care providers are vital to the medical marijuana program. An individual applying to be a qualifying patient within the program must have a bona fide provider-patient relationship with a health care provider.

The patient's health care provider may complete a written certification form that states that in the provider's professional opinion, the patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate

their debilitating medical condition. The written certification form must be submitted to the Division of Medical Marijuana.

#### **5. Who is considered a health care provider?**

A health care provider is:

- A physician licensed by the North Dakota Board of Medicine; or
- An advanced practice registered nurse that is licensed by the North Dakota Board of Nursing.

Per NDCC Chapter 43-17, physician includes physician and surgeon (M.D.) and osteopathic physician and surgeon (D.O.).

Per NDCC Chapter 43-12.1, advanced practice registered nurse includes certified nurse practitioner, certified registered nurse anesthetist, certified nurse midwife, or certified clinical nurse specialist, who functions in one of the population foci as approved by the Board of Nursing.

#### **6. What is a bona fide provider-patient relationship?**

A bona fide provider-patient relationship is a treatment or counseling relationship between a health care provider and patient in which all the following are present:

- The health care provider has reviewed the patient's relevant medical records and completed a full assessment of the patient's medical history and current medical condition, including a relevant, in-person, medical evaluation of the patient.
- The health care provider has created and maintained records of the patient's condition in accordance with medically accepted standards.
- The patient is under the health care provider's continued care for the debilitating medical condition that qualifies the patient for the medical use of marijuana.
- The health care provider has a reasonable expectation that provider will continue to provide follow-up care to the patient to monitor the medical use of marijuana as a treatment of the patient's debilitating medical condition.
- The relationship is not for the sole purpose of providing written certification for the medical use of marijuana.

#### **7. What is a written certification?**

Written certification is a form established by the Department of Health which is to be completed, dated, and signed by a health care provider within ninety calendar days of a patient's date of application, stating that in the health care provider's professional opinion the patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient's debilitating medical condition.

A health care provider may authorize, on the written certification, the use of dried leaves or flowers in a combustible delivery form to treat or alleviate the patient's debilitating medical condition. A written certification may not be made except in the course of a bona fide provider-patient relationship.

**8. What does the written certification form look like and how will it be completed and submitted to the Division of Medical Marijuana?**

The Division of Medical Marijuana is drafting a written certification form. State law includes specific information regarding what is to be included on the written certification form. For example, the form must include information regarding the health care provider's location, license number, and medical or nursing specialty.

The Division of Medical Marijuana is obtaining input and suggestions from the medical community regarding completion and submission of the form. The Division is attempting to reduce the risks of a health care provider's information being used in a fraudulent manner on a written certification form.

**9. Will a health care provider write a prescription for usable marijuana?**

No. There are no prescriptions under the medical marijuana program. A health care provider will only sign a written certification form.

**10. What are the qualifying debilitating medical conditions?**

- Cancer
- Positive status for Human Immunodeficiency Virus (HIV)
- Acquired Immune Deficiency Syndrome (AIDS)
- Decompensated cirrhosis caused by hepatitis C
- Amyotrophic Lateral Sclerosis (ALS)
- Posttraumatic Stress Disorder (PTSD)
- Agitation of Alzheimer's disease or related dementia
- Crohn's disease
- Fibromyalgia
- Spinal stenosis or chronic back pain, including neuropathy or damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity
- Glaucoma
- Epilepsy
- A terminal illness
- A chronic or debilitating disease or medical condition or treatment for such disease or medical condition that produces one or more of the following:
  - Cachexia or wasting syndrome

- Severe debilitating pain that has not responded to previously prescribed medication or surgical measures for more than three months or for which other treatment options produced serious side effects
- Intractable nausea
- Seizures
- Severe and persistent muscle spasms, including those characteristic of multiple sclerosis

**11. What does the phrase medical use of marijuana mean?**

Medical use of marijuana means the acquisition, use, and possession of usable marijuana to treat or alleviate a qualifying patient’s debilitating medical condition.

**12. What is ‘usable marijuana?’**

Under the medical marijuana program, the term usable marijuana includes:

- Dried leaves or flowers (only if authorized on the written certification form);
- Cannabinoid concentrate; and
- Medical cannabinoid product (tincture, capsule, transdermal patch, and topical).

**13. Are edible products allowed under the medical marijuana program?**

No.

**14. Is ‘usable marijuana’ considered to be medicine by the Division of Medical Marijuana?**

No. The dried leaves or flowers and medical marijuana products available through the medical marijuana program are not considered to be medicine.

**15. What information related to the medical marijuana program will be included in the Prescription Drug Monitoring Program (PDMP)?**

Under the proposed rules, data related to usable marijuana dispensed for registered qualifying patient use is to be submitted by the Department of Health to the PDMP. The type of data to be submitted has yet to be determined.

**16. Is qualifying patient information kept confidential?**

Yes. The Division of Medical Marijuana will maintain a confidential list of registered qualifying patients and each patient’s information. Such information is confidential under state law.

**17. Can a patient under the age of 19 years participate in the medical marijuana program?**

Yes. A patient under the age of 19 is considered to be a minor. The minor’s parent or individual with legal responsibility for making medical decisions for the minor must

submit an application on behalf of the applicant. A registered designated caregiver must purchase usable marijuana on the minor's behalf. A registered designated caregiver can be a parent, guardian, or other individual.

**18. Do minors participating in the medical marijuana program have any restrictions or limitations on products?**

Yes. A registered qualifying patient who is a minor is not eligible to purchase or use any dried leaves and flowers or any product with a THC concentration greater than six percent (6%).

**19. Does state law related to the medical marijuana program include any protections to health care providers?**

Yes. Under state law, a health care provider is not subject to arrest or prosecution or the denial of any right or privilege, including a civil penalty or disciplinary action by a court or occupational or professional regulating entity, solely for providing a written certification or for otherwise stating in the health care provider's professional opinion a patient is likely to receive therapeutic or palliative benefit from the medical use of usable marijuana to treat or alleviate the patient's debilitating medical condition or for refusing to provide written certification or a statement.

The law also states that the medical marijuana law does not release a health care provider from the duty to exercise a professional standard of care for evaluating or treating a patient's medical condition.

**20. Does state law require a health care provider to sign a written certification or otherwise recommend marijuana to a patient?**

No.

**21. Does state law include information for a health care provider holding a financial interest in a manufacturing facility or dispensary?**

Yes. A health care provider who holds a financial interest in a compassion center may not knowingly:

- Refer a patient to a compassion center,
- Refer a patient to a registered designated caregiver,
- Advertise in a compassion center, or
- Issue a written certification.

State law requires a health care provider who violates this provision to be fined up to one thousand dollars.