

The Oregon Medical Marijuana Program

Current Marijuana
Regulatory Regimes
May 2018

Oregon
Health
Authority

PUBLIC HEALTH DIVISION
Oregon Medical Marijuana Program

OREGON MEDICAL MARIJUANA PROGRAM CURRENT MARIJUANA REGULATORY REGIMES:

A comparison of different approaches to regulating both medical and recreational marijuana

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Oregon Medical Marijuana Program
Analysis Unit
PO Box 14450
Portland, OR 97293-0450
www.healthoregon.org/ommp

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MARIJUANA REGULATION REGIMES
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Introduction

Recreational marijuana is legal in nine states and in the District of Columbia. Each of these jurisdictions also has a medical marijuana program, and the following report summarizes the way each one regulates the two different systems of marijuana.

Key Findings

- All US jurisdictions that currently have legalized recreational, adult-use marijuana had already implemented medical marijuana programs before full legalization occurred
- Five states have two separate regulatory bodies overseeing their medical and recreational programs
- Two states have or plan to have one body overseeing both programs
- In both states with one regulator for both programs, there remains a registry of medical participants that is administered separate from the regulator, and in each case by that state's public health body
- Two states and the District of Columbia merely decriminalized recreational marijuana, and so essentially do not have regulators of their recreational "programs"

Multiple Agencies

- Alaska
- Colorado
- Massachusetts
- Oregon
- Washington

Like Oregon, most legal markets currently keep the administration of their recreational and medical marijuana programs separate. In each of the states for which this is true, the medical program predates recreational legalization, often by more than a decade.

Alaska's medical program is overseen by their Division of Public Health, and was approved by 69 percent of voters in 1998. Its recreational market was approved by voters in 2014, and is regulated by Alaska's Alcohol & Marijuana Control Office. It does not appear that participants in Alaska's medical program have to report any inventory or transfer activity, and medical marijuana is not subject to tax.

Colorado voters approved its medical marijuana program in November 2000; the Colorado Department of Public Health & Environment implemented that program in 2001, and continues to regulate the program. In 2012, Colorado became one of the first two states to legalize recreational marijuana, a market which came online in 2014, and which is regulated by the Marijuana Enforcement Division – an arm of the state's Department of Revenue. Medical marijuana is subject to Colorado's normal 2.9% sales tax. As such, any business that sells medical marijuana must report these transactions as any retailer would report sales. There is no reporting requirement for medical participants.

Of all the states discussed in this report, Massachusetts has the youngest medical marijuana program. It was approved by a ballot passed in 2012, and is administered by the state's Department of Public Health. The state voted for non-medical (recreational) legalization in 2016, and their recreational market is overseen by its newly formed Cannabis Control Commission. A registered marijuana dispensary (RMD) in Massachusetts is subject to reporting to the Department of Public Health, but medical participants are not subject to reporting requirements, and medical marijuana is untaxed.

Oregon voters approved of medical marijuana in 1998, and the resulting program continues to be administered by the Public Health Division of the Oregon Health Authority. In 2014, the state's recreational market was approved by voters, and is currently regulated by the Oregon Liquor Control Commission. Medical marijuana is also untaxed in Oregon, and some growers are required to report inventory and transfer activity.¹

Like Oregon, Washington State voters approved their medical marijuana program in 1998. This program is overseen by the state's Department of Health. In 2012, Washington joined Colorado as the first two states to legalize recreational marijuana. Its rec market is regulated by the Washington State Liquor & Cannabis Board. Medical marijuana is subject to a 37 percent excise tax in Washington, but registered patients are exempt from paying the 8 percent sales tax. Medical program participants are not required to report on inventory or transfers.

One Agency

- California (planned)
- Nevada

California's medical marijuana program was the first in the US, starting in 1996, and it was previously administered by the California Department of Public Health (CDPH). In 2017, California passed comprehensive legislation known collectively as the Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA), which moved regulation of both medical and recreational cannabis under one body, the new Bureau of Cannabis Control. Implementation of this legislation is ongoing, but even after it is complete, "CDPH will continue to print identification cards and maintain a registry database for verification of qualified patients and their primary caregivers."² Medical marijuana is exempt from California's standard 7.25 percent sales tax and its 15 percent excise tax. Medical program registrants are not required to track inventory and transfers.

Currently only Nevada claims to have moved administration of both its recreational and medical programs under one authority, the Department of Taxation. According to its website, the medical program, which voters approved in 1998, had previously been administered by the Division of Public and Behavioral Health, which still does administer the state's Medical Marijuana Patient Cardholder Registry.³ Nevada voters approved of recreational marijuana in 2016, but the relevant initiative did not include provisions for regulation beyond taxation, which likely explains the authority currently responsible for its oversight.⁴ In Nevada, medical marijuana is subject to a 2 percent excise tax, and while medical dispensaries must use the state's reporting system, program participants themselves are not subject to tracking and reporting.

No True Recreational Market

- Maine

¹ For details on reporting, see <http://www.oregon.gov/oha/PH/DISEASES/CONDITIONS/CHRONICDISEASE/MEDICALMARIJUANAPROGRAM/Pages/reporting.aspx>

² <https://www.cdph.ca.gov/Programs/CHSI/Pages/MMP-FAQS.aspx?PagePreview=true>

³ http://marijuana.nv.gov/Medical/Medical_Marijuana/

⁴ <https://knpr.org/knpr/2016-04/after-november-whats-next-recreational-marijuana-nevada>

- Vermont
- Washington, D.C.

Maine legalized medical marijuana in 1999 by voter approval, and its medical program is administered by the state’s Department of Health & Human Services. In 2016, the state’s voters approved of a full recreational market – including production and retail sales – however, Governor Paul LePage vetoed the state legislature’s bill to tax and regulate recreational sales in 2017. The veto was very recently overturned, on May 2, 2018, and so the bill has become law, but has not yet been implemented. The regulatory body overseeing Maine’s recreational market is referred to in law as the “state licensing authority,” but remains as yet an unnamed body. Medical marijuana is untaxed in Maine, but new rules passed in November 2017 will require a patient’s caregiver to document the transport of product between their grow site and where they dispense the product.⁵ The rules went into effect February 2018.

Vermont’s legislature legalized medical marijuana in 2004, and the body responsible for its medical program is the state’s Department of Public Safety. In January 2018, Vermont became the first state to legalize recreational marijuana through legislative action (as opposed to direct voter approval), but the relevant legislation approved personal possession, use, and cultivation, but not commercial sales.⁶ As such, there is no true recreational “market,” in Vermont, yet there has been discussion among some legislators regarding future plans for a taxed, regulated market.⁷ Medical marijuana in Vermont is not subject to taxation, and participants in its program are not required to report on inventory or transfers.

In Washington, D.C., medical marijuana was approved by ballot measure in 1998, but its implementation was effectively blocked by the US Congress until 2009. The Council of the District of Columbia legalized a full medical program in 2010, and the program began the next year. It is overseen by the District’s Health Regulation & Licensing Administration. In 2014, voters approved a measure that legalized possession, cultivation, and transfers of recreational marijuana, but the sale and purchase of non-medical marijuana remains illicit. Therefore, as in Vermont, there is no true recreational “market” in D.C. Medical marijuana is untaxed in the District, and while patients and caregivers are not required to track, they must “register” to a specific dispensary, and can only purchase from that location.

Summary Table

Jurisdiction	One agency?	Med passed	Governance of medical	Rec passed	Governance of recreational
Alaska	No	1998	Division of Public Health	2014	Alcohol & Marijuana Control Office
California	Yes (planned)	1996	Department of Public Health (current)	2016	Bureau of Cannabis Control (future)
Colorado	No	2000	Department of Public Health & Environment	2012	Dept of Revenue (MJ Enforcement Div)
Maine	N/A	1999	Department of Health & Human Services	2016	TBD - "State Licensing Authority"
Massachusetts	No	2012	Department of Public Health	2016	Cannabis Control Commission
Nevada	Yes	2000	Div of Pub Health & Behavioral Health (formerly)	2016	Dept of Taxation
Oregon	No	1998	Public Health Division of Health Authority	2014	Oregon Liquor Control Commission
Vermont	N/A	2004	Department of Public Safety	2018	Legalization of possession only
Washington	No	1998	Department of Health	2012	Washington State Liquor & Cannabis Board
Washington D.C.	N/A	2010	Health Regulation & Licensing Admin	2014	Legalization of possession only

⁵ <https://www.pressherald.com/2017/11/08/state-tightens-rules-over-medical-marijuana-caregivers/>

⁶ <http://digital.vpr.net/post/vermont-house-approves-marijuana-legalization-bill-now-goes-gov-scott#stream/0>

⁷ <http://digital.vpr.net/post/backers-tax-and-regulate-marijuana-legalization-bill-vow-push-their-plan#stream/0>