



Medical Marijuana & Housing

Fact Sheet

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Medical Cannabis in Maryland: Overview

- In 2013, the Maryland General Assembly enacted the state's first legislation creating a framework for the medicinal use of cannabis. [Chapter 403 of the Acts of MD 2013](#)
- A "qualifying patient" may possess up to a 30-day supply of medical cannabis without being subject to arrest, prosecution, or any civil or administrative penalty. The Natalie LaPrade Medical Cannabis Commission will determine what constitutes a 30-day supply. [Health-General Article 13-3313\(a\)](#).
- On June 26, 2015, the Commission published proposed regulations governing the growth, sale, distribution, possession and use of medical cannabis. [Maryland Register, Vol. 42, Issue 13, pages 812-45 \(June 26, 2015\)](#). The comment period closed July 27, 2015, and final regulations are anticipated soon. At this time, medical cannabis is not available for sale or use in Maryland.

Federal Law Concerning Marijuana

- Under the federal Controlled Substances Act, marijuana is categorized as a Schedule 1 drug that has a high potential for abuse and no accepted medical use in treatment in the United States; therefore, use and possession are illegal. 21 U.S.C. §812 Schedule 1(c)(17)
- Despite federal law, as of April 2015, at least 23 states, along with the District of Columbia and Guam, have passed laws exempting qualified users of medical marijuana from penalties imposed under state law, and created state medical marijuana programs. See Colorado Medical Marijuana Code, C.R.S. 12-43.3-101 *et seq.*; Hawai'i Uniform Controlled Substances Act, Haw. Rev. Stat. §329-121 *et seq.*; Washington Medical Cannabis, Rev. Code of Wash. 69.51A *et seq.*
- Generally, states may enact marijuana laws so long as the state law does not create a "positive conflict" with federal law – meaning the two laws "cannot consistently stand together." Numerous state courts have held that state medical marijuana laws do not create a positive conflict with the Controlled Substances Act,

while at least one federal court has held that state marijuana laws are pre-empted by the Act. See [Emerald Steel Fabricators, Inc. v. Bureau of Labor & Indus.](#), 348 Ore. 159, 174 (2010); [County of San Diego v. San Diego NORML](#), 165 Cal. App. 4th 798, 822 (2008); [People v. Crouse](#), 2013 COA 174, P17 (2013); [United States v. Trujillo](#), 2014 U.S. Dist. LEXIS 101899, (E.D. Wash. July 25, 2014). According to one legal expert, “[a]lthough it is difficult to determine the extent to which states can legalize and regulate medical marijuana, laws that exceed a decision not to criminalize specific conduct, and instead actively authorize the use of marijuana in contravention of the CSA, would appear to raise more stark preemption concerns.” Garvey, T. *Medical Marijuana: The Supremacy Clause, Federalism, and the Interplay Between State and Federal Laws* (2012) accessed at <https://www.fas.org/sqp/crs/misc/R42398.pdf>. However, states continue to pass laws decriminalizing marijuana for medical use and creating state medical marijuana programs.

Medical Cannabis in Federally-Assisted Housing

The U.S. Department of Housing and Urban Development has issued memoranda on the topic of medical marijuana use by residents of federally-assisted housing. Two of these memoranda, [Memorandum on the Use of Marijuana in Multifamily Assisted Properties](#), 2014, and U.S. Department of Housing and Urban Development, [Memorandum on Medical Marijuana Use in Public Housing and Housing Choice Voucher Program](#), 2011, provide the following guidance:

- Under the Quality Housing and Work Responsibility Act of 1998 (QHWRA), medical marijuana users applying for residence in a federally-assisted housing unit, Public Housing Authority unit, or a Housing Choice Voucher program must be denied admission if it is known to administrators at the time of application that the applicant uses medical marijuana.
- The QHWRA also provides owners, PHAs, and HCV programs the discretion to determine, on a case-by-case basis, whether to evict current tenants who use marijuana, regardless of whether the use of marijuana is for a medical purpose.
- According to the Department of Housing and Urban Development, owners of federally-assisted housing, PHAs, and HCV programs in states with legalized medical marijuana use must establish policies which address whether or not residents who use medical marijuana are permitted to continue to occupy, or receive assistance for, their housing units.
- Owners, PHAs and HCV programs may not establish lease provisions or policies that affirmatively permit occupancy by any member of a household who uses marijuana.

Medical Cannabis in Market Rate Housing

- Maryland law **expressly** permits any landlord, condominium association or homeowners association to ban the **smoking** of medical cannabis on their property, including within individual units. *Md. Code Ann. Health-General § 13-3314*
- Landlords, condominium associations and homeowners associations **may not** prohibit residents from “vaporizing cannabis” in their unit. *Md. Code Ann. Health-General § 13-3314*
- Any resident that violates smokes cannabis in their unit, in violation of their rental agreement or condominium or homeowner association bylaws or rules, may be subject to prosecution for use, possession, or distribution of a controlled substance. *Md. Code Ann. Health-General § 13-3314*

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