

Recommending Medical Provider Medical Cannabis Law Fact Sheet



Introduction

This fact sheet highlights parts of the Utah Medical Cannabis Act (UCA 26-61a-101, et. seq) and administrative rules that are most applicable to the practice of a recommending medical provider (RMP). An RMP must know and understand all laws applicable to their practice, not only those mentioned in this fact sheet. While this fact sheet features certain parts of the law, it is not intended to be comprehensive or to replace the language of the law. Failure to follow any state law applicable to medical cannabis may constitute a violation and may result in the Utah Department of Health and Human Services (DHHS) taking formal action against an RMP.

This summary does not constitute legal advice. Individuals should consult their own attorney to answer any legal questions. However, DHHS can provide guidance on how it regulates medical cannabis.

If you have questions about the information in this fact sheet, please contact the DHHS Center for Medical Cannabis at medicalcannabis@utah.gov or (801) 538-6504.

Types of RMPs

The DHHS Center for Medical Cannabis utilizes two pathways that RMPs can use to recommend medical cannabis to qualifying patients: The Limited Medical Provider (LMP) program and the Qualified Medical Provider (QMP) program.

Both pathways require that the provider is a Utah-licensed MD, DO, APRN, PA, or DPM with a controlled-substance license.

LMPs. LMPs are not required to register with the DHHS Center for Medical Cannabis or complete continuing-education requirements to recommend medical cannabis.¹ They can only recommend medical cannabis to patients who have a qualifying condition for medical cannabis use and who are 21 years or older. Additionally, they are limited to 15 active medical cannabis recommendations at a time.²

¹ Utah Code 26-61a-106 (1)(b)

² Utah Code 26-61a-106 (1)(b)(ii)

To recommend medical cannabis, an LMP completes the *Limited Medical Provider Recommendation for Medical Cannabis* form and faxes or emails it to a licensed medical cannabis pharmacy.³ The medical cannabis pharmacy will then enter the completed form into the Electronic Verification System (EVS). The patient will then be able to complete their medical cannabis application.

QMPs. QMPs are required to register with the DHHS Center for Medical Cannabis, pay a \$100 registration fee, and complete four hours of DHHS-approved continuing education on medical cannabis during each two-year renewal period.^{4,5}

Continuing education coursework must include the following:

- Pre-approval by DHHS;
- Be provided by an organization accredited through the Accreditation Council for Continuing Medical Education (ACCME), Accreditation Council for Pharmacy Education (ACPE), or the American Association of Nurse Practitioners (AANP);
- Completion of a test with a passing score, as determined by the course provider, to verify comprehension of course content; and
- A certification of completion.⁶

QMPs are limited to 275 active medical cannabis recommendations at a time. However, if a QMP is certified by the appropriate American medical board in anesthesiology, gastroenterology, neurology, oncology, pain, hospice and palliative medicine, physical medicine and rehabilitation, rheumatology, endocrinology, psychiatry, or if a licensed business employs or contracts the QMP for the specific purpose of providing hospice and palliative care, their medical cannabis recommendation limit can be increased to 600.⁷

Additionally, QMPs can petition the Compassionate Use Board (CUB) to approve a medical cannabis patient card or provisional patient card if a patient would benefit from medical cannabis use but does not have a qualifying condition or is younger than 21 years.

An individual may not register as a QMP if they are:

- A pharmacy medical provider (PMP); or
- An owner, officer, director, board member, employee, or agent of a cannabis production establishment, a medical cannabis pharmacy, or a medical cannabis courier.⁸

³ Utah Code 26-61a-106 (1)(c)

⁴ Utah Code 26-61a-106

⁵ Utah Code 26-61a-106 (7)(b)(iv)

⁶ Utah Admin Code R380-403-5 and Utah Code 26-61a-106 (3)

⁷ Utah Code 26-61a-106 (4)

⁸ Utah Code 26-61a-106 (2)(b)

Recommending medical cannabis to patients

Appointments. An RMP's first appointment with a patient requesting a medical cannabis recommendation must be in-person. Subsequent appointments may be done virtually or via telehealth.⁹ Medical cannabis may only be recommended to patients in the course of the provider-patient relationship.

Documentation. An RMP must conduct a thorough assessment of the patient's condition and medical history and document this in their medical record.¹⁰ The assessment should include the following items:

- Reviewing the patient's valid form of identification;
- Reviewing patient records in EVS and the Utah controlled substance database (CSD);
- Considering the patient's qualifying condition;
- Considering the patient's history of substance use or opioid use disorder;
- Considering the patient's history of medical cannabis and controlled substance use.¹¹

Medical cannabis card renewal periods. An initial medical cannabis card issued by DHHS is valid for 6 months. After an initial medical cannabis card has been held for 1 year, a patient may be eligible for a 1 year renewal period if the RMP approves and determines that the patient has stabilized on medical cannabis.¹²

Recommending medical provider revocation of a previous medical cannabis recommendation. An RMP may revoke their previous recommendation of a medical cannabis card to a patient if: (1) terminal illness was the patient's qualifying condition, and (2) if the RMP determines that the patient no longer has the terminal illness.

Medical cannabis dosage forms

Utah's medicinal cannabis dosage forms are limited to:

- Tablet;
- Capsule;

⁹ Utah Code 26-61a-103 (2)(c)(ii) and (iii)

¹⁰ Utah Code 26-61a-106 (5)

¹¹ Utah Code 26-61a-201 (4)

¹² Utah Code 26-61a-201 (5)

- Concentrated liquid or viscous oil;
- Liquid suspension that after December 1, 2022, does not exceed 30 ml;
- Topical preparation;
- Transdermal preparation;
- Sublingual preparation;
- Gelatinous cube, gelatinous rectangular cuboid, or lozenge in a cube or rectangular cuboid shape;
- Resin or wax;
- Aerosol;
- Unprocessed cannabis flower.¹³

Dispensing limits

Legal Dosage Limit. A medical cannabis pharmacy may dispense to a patient up to the “legal dosage limit” of medical cannabis.¹⁴

- Legal dosage limit is defined as an amount that is sufficient to provide 30 days of treatment based on dosing guidelines that the relevant RMP or PMP recommends.¹⁵
- This amount cannot ever exceed 113 grams by weight for unprocessed cannabis flower and 20 grams of active THC for other cannabis products. However, the RMP and PMP have the option to limit a patient to less than those amounts.¹⁶
- Dosing guidelines are a quantity range and frequency of administration for a recommended treatment of medical cannabis.¹⁷

Routes of Administration Limit. A patient may not purchase a medical cannabis product that is intended for a route of administration that the RMP or PMP has not recommended to the patient.^{18, 19}

- If an RMP has not recommended a route of administration to a patient, then one may be recommended by the PMP.
- In these cases, the PMP must document the recommended route(s) of administration in the EVS so a pharmacy agent may view the recommendation and ensure it is followed.²⁰

¹³ Utah Code 26-61a-102 (38)

¹⁴ Utah Code 26-61a-502 (2)

¹⁵ Utah Code 26-61a-102 (20)(a)

¹⁶ Utah Code 26-61a-102 (20)(b)

¹⁷ Utah Code 26-61a-102 (16)

¹⁸ Routes of administration include vaporization, oral, sublingual, topical or transdermal.

¹⁹ Utah Code 26-61a-502 (3)(c)

²⁰ Utah Admin Code R380-401-3

PMP Review of medical cannabis transactions. A PMP is required to review each medical cannabis transaction before the cannabis is dispensed to the patient.²¹

Recommendation of dosing guidelines and directions of use

An RMP has the option of only recommending medical cannabis and delegating the directions of use and dosing guidelines to the PMP.²² If dosing guidelines and directions of use are delegated to the PMP, the RMP may submit the following information about the patient in the EVS:

- An evaluation of the qualifying condition underlying the recommendation;
- Prior treatment attempts with medical cannabis; and
- The patient's current medication list.²³

PMP Consultation Requirement. A medical cannabis pharmacy may only dispense cannabis to a patient who has received a medical cannabis card through the EVS.²⁴ A PMP must consult with a patient prior to their first medical cannabis purchase.²⁵

RMP Recommendation with Complete Dosing Guidelines. When an RMP recommends dosing guidelines, a PMP at a medical cannabis pharmacy must ensure the patient's purchase complies with the guidelines.

- For example, if an RMP selects "concentrated oil" as the dosage form in a recommendation, a medical cannabis pharmacy must only sell the patient medical cannabis in the form of concentrated oil. An RMP may recommend one or more dosage forms.
- If an RMP indicates 1:1 as the ratio of THC to CBD, a patient must only purchase products with a 1:1 ratio of THC to CBD.
- To change an RMP's recommendation, a PMP must contact the cardholder's RMP, obtain approval from the RMP to change the recommendation, and document the RMP's approval of the change in EVS.²⁶

RMP Recommendation with Partial Dosing Guidelines. If an RMP only limits a certain part of a recommendation in the EVS but does not limit other parts (e.g. limits dosage form but does not limit amount or vice versa), a PMP may determine the remaining parts of the recommendation during a consultation. However, the PMP may not change what the RMP has already recommended unless approval for the change is communicated by the RMP to the PMP and documented in the EVS.¹⁶

²¹ Utah Code 26-61a-502 (6)(a)(iii)

²² Utah Code 26-61a-102 (46)(b)

²³ Utah Code 26-61a-502 (4)(a)

²⁴ Tyler Technology's Entellitrak Software

²⁵ Utah Code 26-61-502 (4) and (5) and (6)

²⁶ Utah Admin Code R380-404-2

PMP Determination of Patient’s Dosing Guidelines. If an RMP certifies a patient’s eligibility for a medical cannabis card but allows the PMP to recommend dosing guidelines, as documented in EVS, a PMP must determine the best course of treatment through consultation with the patient. To determine a patient’s best course of treatment, a PMP must review the following with the patient:

1. Any information about the patient in EVS or from the *Limited Medical Provider Recommendation for Medical Cannabis* form;
2. The patient’s qualifying condition;
3. Indications for medical treatments;
4. Any directions of use and dosing guidelines documented by the RMP; and
5. Potential adverse reactions.²⁷

Advertising, compensation, and benefits

An RMP may not advertise that they recommend medical cannabis beyond the communication of the following, through a website, which does not constitute advertising:

- A green cross;
- The provider’s or clinic’s name and logo;
- A qualifying condition that the provider treats;
- That the provider is registered as a QMP and recommends medical cannabis; or
- A scientific study regarding medical cannabis use.²⁸

An RMP may not receive any compensation or benefit for their medical cannabis treatment recommendation from:

- A cannabis production establishment or an owner, officer, director, board member, employee, or agent of a cannabis production establishment;
- A medical cannabis pharmacy or an owner, officer, director, board member, employee, or agent of a medical cannabis pharmacy; or
- A recommending medical provider or a pharmacy medical provider.²⁹

²⁷ Utah Code 26-61a-502 (4)(b)

²⁸ Utah Code 26-61a-106 (6)

²⁹ Utah Code 26-61a-106 (9)

Protection from state prosecution

An RMP who is licensed and following state laws and regulations for recommending medical cannabis will not be subject to the following, solely for recommending and/or dispensing medical cannabis:

- Civil or criminal liability; or
- Licensure sanctions under Pharmacy Practice Act, Nurse Practice Act, Utah Medical Practice Act, Utah Osteopathic Medical Practice Act, or Utah Physician Assistant Act.³⁰

Additionally, licensed DPMs, APRNs, physicians, or physician assistants who are registered as QMPs with DHHS or who participate in the LMP program, and who are recommending medical cannabis as outlined in the Utah Medical Cannabis Act will also not be subject to the liability or licensure sanctions, as outlined above.³¹

RMPs maintain a duty to use reasonable and ordinary care when treating patients with a qualifying condition who may benefit from or who are currently using medical cannabis.³² RMPs are still subject to legal limitations when accessing private and protected health information regarding medical cannabis.³³

An RMP who is not following the law as laid out in the Utah Medical Cannabis Act and the Utah Controlled Substances Act may be subject to the following:

- Denial of an application for a medical cannabis card or a QMP registration card.
- Suspension or revocation of a medical cannabis card or a QMP registration card.
- Suspension or revocation of a medical cannabis card or a QMP registration card
- Imposition of a penalty or fine.³⁴

³⁰ Utah Code 26-61a-107 (1)

³¹ Utah Code 26-61a-107 (2)

³² Utah Code 26-61a-107 (3)

³³ Utah Code 26-61a-103 (7) and (8)

³⁴ Utah Admin Code R380-411-4 (5)