

**DRAFT**  
**Potential Consensus Changes**  
**OMMP Interim Legislative Advisory Committee**

OREGON MEDICAL MARIJUANA ACT

**475.300 Findings.** The people of the state of Oregon hereby find that:

- (1) Patients and doctors have found marijuana to be an effective treatment for suffering caused by debilitating medical conditions, and therefore, marijuana should be treated like other medicines;
- (2) Oregonians suffering from debilitating medical conditions should be allowed to use small amounts of marijuana without fear of civil or criminal penalties when their doctors advise that such use may provide a medical benefit to them and when other reasonable restrictions are met regarding that use;
- (3) ORS 475.300 to 475.346 are intended to allow Oregonians with debilitating medical conditions who may benefit from the medical use of marijuana to be able to discuss freely with their doctors the possible risks and benefits of medical marijuana use and to have the benefit of their doctor's professional advice; and
- (4) ORS 475.300 to 475.346 are intended to make only those changes to existing Oregon laws that are necessary to protect patients and their doctors from criminal and civil penalties, and are not intended to change current civil and criminal laws governing the use of marijuana for nonmedical purposes. [1999 c.4 §2]

**Note:** 475.300 to 475.346 were adopted by the people by initiative petition but were not added to or made a part of ORS chapter 475 or any series therein. See Preface to Oregon Revised Statutes for further explanation.

**475.302 Definitions for ORS 475.300 to 475.346.** As used in ORS 475.300 to 475.346:

- (1) "Attending physician" means a physician licensed under ORS chapter 677 who has primary responsibility for the care and treatment of a person diagnosed with a debilitating medical condition.
- (2) "Debilitating medical condition" means:
  - (a) Cancer, glaucoma, positive status for human immunodeficiency virus or acquired immune deficiency syndrome, or treatment for these conditions;
  - (b) A medical condition or treatment for a medical condition that

produces, for a specific patient, one or more of the following:

(A) Cachexia;

(B) Severe pain;

(C) Severe nausea;

(D) Seizures, including but not limited to seizures caused by epilepsy; or

(E) Persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis; or

(c) Any other medical condition or treatment for a medical condition adopted by the department by rule or approved by the department pursuant to a petition submitted pursuant to ORS 475.334.

(3) “Delivery” has the meaning given that term in ORS 475.005.

(4) “Department” means the Department of Human Services.

(5) “Designated primary caregiver” means an individual 18 years of age or older who has significant responsibility for managing the well-being of a person who has been diagnosed with a debilitating medical condition and who is designated as such on that person’s application for a registry identification card or in other written notification to the department.

“Designated primary caregiver” does not include the person’s attending physician.

(6) “Marijuana” has the meaning given that term in ORS 475.005.

(7) “Medical use of marijuana” means the production, possession, delivery, or administration of marijuana, or paraphernalia used to administer marijuana, as necessary for the exclusive benefit of a person to mitigate the symptoms or effects of his or her debilitating medical condition.

(8) “Production” has the same meaning given that term in ORS 475.005.

(9) “Registry identification card” means a document issued by the department that identifies a person authorized to engage in the medical use of marijuana and the person’s designated primary caregiver, if any.

(10) “Usable marijuana” means the dried leaves and flowers of the plant Cannabis family Moraceae, and any mixture or preparation thereof, that are appropriate for medical use as allowed in ORS 475.300 to 475.346. “Usable marijuana” does not include the seeds, stalks and roots of the plant.

(11) “Written documentation” means a statement signed by the attending physician of a person diagnosed with a debilitating medical condition or copies of the person’s relevant medical records. [1999 c.4 §3; 2001 c.900 §205; 2003 c.14 §305]

**Note:** See note under 475.300.

**475.305** [1977 c.636 §1; 1979 c.674 §1; repealed by 1993 c.571 §30]

**475.306 Medical use of marijuana; limits on amount possessed, delivered or produced; rules.** (1) A person who possesses a registry identification card issued pursuant to ORS 475.309 may engage in, and a designated primary caregiver of such a person may assist in, the medical use of marijuana only as justified to mitigate the symptoms or effects of the person's debilitating medical condition. Except as allowed in subsection (2) of this section, a registry identification cardholder and that person's designated primary caregiver may not collectively possess, deliver or produce more than the following:

(a) If the person is present at a location at which marijuana is not produced, including any residence associated with that location, one ounce of usable marijuana; and

(b) If the person is present at a location at which marijuana is produced, including any residence associated with that location[~~]~~: **three mature marijuana plants, four immature marijuana plants and one ounce of usable marijuana per each mature plant; or seven plants of any maturity level and seven ounces of usable marijuana; or twenty eight plants of any maturity level with eighty ounces of usable marijuana if grown on an annual basis only.**

(c) **If a patient elects to accept either the seven plants of any maturity level or the annual grow option, such option will be indicated on the patient's and caregiver's registration cards and noted in the registration system data base. With such election, the patient and caregiver waive the right to the affirmative defense as set for in (2) below.**

(d) **A patient or caregiver may elect to register a multiple-patient grow site with the program. Such a site may grow for up to seven patients with seven plants of any maturity level for each patient. If this option is elected, the patient and caregiver waive the right to an affirmative defense.**

(2) If the individuals described in subsection (1) of this section possess, deliver or produce marijuana in excess of the amounts allowed in subsection (1) of this section, such individuals are not excepted from the criminal laws of the state but may establish an affirmative defense to such charges, by a preponderance of the evidence, that the greater amount is medically necessary to mitigate the symptoms or effects of the person's debilitating medical condition.

(3) The Department of Human Services shall define by rule when a marijuana plant is mature and when it is immature for purposes of this section. **Any plant material that has no flowers and is both under twelve**

**inches in height and twelve inches in diameter shall be considered a seedling or start rather than a plant.** [1999 c.4 §7]

**Note:** See note under 475.300.

**475.309 Registry identification card; issuance; eligibility; duties of cardholder.** (1) Except as provided in ORS 475.316 and 475.342, a person engaged in or assisting in the medical use of marijuana is excepted from the criminal laws of the state for possession, delivery or production of marijuana, aiding and abetting another in the possession, delivery or production of marijuana or any other criminal offense in which possession, delivery or production of marijuana is an element if the following conditions have been satisfied:

(a) The person holds a registry identification card issued pursuant to this section, has applied for a registry identification card pursuant to subsection (9) of this section or is the designated primary caregiver of a cardholder or applicant; and

(b) The person who has a debilitating medical condition and the person's primary caregiver are collectively in possession of, delivering or producing marijuana for medical use in the amounts allowed in ORS 475.306.

(2) The Department of Human Services shall establish and maintain a program for the issuance of registry identification cards to persons who meet the requirements of this section. Except as provided in subsection (3) of this section, the department shall issue a registry identification card to any person who pays a fee in the amount established by the department and provides the following:

(a) Valid, written documentation from the person's attending physician stating that the person has been diagnosed with a debilitating medical condition and that the medical use of marijuana may mitigate the symptoms or effects of the person's debilitating medical condition;

(b) The name, address and date of birth of the person;

(c) The name, address and telephone number of the person's attending physician; and

(d) The name and address of the person's designated primary caregiver, if the person has designated a primary caregiver at the time of application.

(3) The department shall issue a registry identification card to a person who is under 18 years of age if the person submits the materials required under subsection (2) of this section, and the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age signs a written statement that:

(a) The attending physician of the person under 18 years of age has explained to that person and to the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age the possible risks and benefits of the medical use of marijuana;

(b) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age consents to the use of marijuana by the person under 18 years of age for medical purposes;

(c) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age agrees to serve as the designated primary caregiver for the person under 18 years of age; and

(d) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age agrees to control the acquisition of marijuana and the dosage and frequency of use by the person under 18 years of age.

(4) A person applying for a registry identification card pursuant to this section may submit the information required in this section to a county health department for transmittal to the Department of Human Services. A county health department that receives the information pursuant to this subsection shall transmit the information to the Department of Human Services within five days of receipt of the information. Information received by a county health department pursuant to this subsection shall be confidential and not subject to disclosure, except as required to transmit the information to the Department of Human Services.

(5) The department shall verify the information contained in an application submitted pursuant to this section and shall approve or deny an application within thirty days of receipt of the application.

(a) The department may deny an application only for the following reasons:

(A) The applicant did not provide the information required pursuant to this section to establish the applicant's debilitating medical condition and to document the applicant's consultation with an attending physician regarding the medical use of marijuana in connection with such condition, as provided in subsections (2) and (3) of this section; or

(B) The department determines that the information provided was falsified.

(b) Denial of a registry identification card shall be considered a final department action, subject to judicial review. Only the person whose application has been denied, or, in the case of a person under the age of 18 years of age whose application has been denied, the person's parent or legal guardian, shall have standing to contest the department's action.

(c) Any person whose application has been denied may not reapply for six months from the date of the denial, unless so authorized by the department or a court of competent jurisdiction.

(6)(a) If the department has verified the information submitted pursuant to subsections (2) and (3) of this section and none of the reasons for denial listed in subsection (5)(a) of this section is applicable, the department shall issue a serially numbered registry identification card within five days of verification of the information. The registry identification card shall state:

(A) The cardholder's name, address and date of birth;

(B) The date of issuance and expiration date of the registry identification card;

(C) The name and address of the person's designated primary caregiver, if any; and

(D) Such other information as the department may specify by rule.

(b) When the person to whom the department has issued a registry identification card pursuant to this section has specified a designated primary caregiver, the department shall issue an identification card to the designated primary caregiver. The primary caregiver's registry identification card shall contain the information provided in paragraph (a) of this subsection.

(7)(a) A person who possesses a registry identification card shall:

(A) Notify the department of any change in the person's name, address, attending physician or designated primary caregiver; and

(B) Annually submit to the department:

(i) Updated written documentation of the person's debilitating medical condition; and

(ii) The name of the person's designated primary caregiver if a primary caregiver has been designated for the upcoming year.

(b) If a person who possesses a registry identification card fails to comply with this subsection, the card shall be deemed expired. If a registry identification card expires, the identification card of any designated primary caregiver of the cardholder shall also expire.

(8) A person who possesses a registry identification card pursuant to this section and who has been diagnosed by the person's attending physician as no longer having a debilitating medical condition shall return the registry identification card to the department within seven calendar days of notification of the diagnosis. Any designated primary caregiver shall return the caregiver's identification card within the same period of time.

(9) A person who has applied for a registry identification card pursuant to this section but whose application has not yet been approved or denied, and

who is contacted by any law enforcement officer in connection with the person's administration, possession, delivery or production of marijuana for medical use may provide to the law enforcement officer a copy of the written documentation submitted to the department pursuant to subsections (2) or (3) of this section and proof of the date of mailing or other transmission of the documentation to the department. This documentation shall have the same legal effect as a registry identification card until such time as the person receives notification that the application has been approved or denied. [1999 c.4 §4; 1999 c.825 §2; 2003 c.14 §306]

**Note:** See note under 475.300.

**475.312 Designated primary caregiver.** (1) If a person who possesses a registry identification card issued pursuant to ORS 475.309 chooses to have a designated primary caregiver, the person must designate the primary caregiver by including the primary caregiver's name and address:

- (a) On the person's application for a registry identification card;
- (b) In the annual updated information required under ORS 475.309; or
- (c) In a written, signed statement submitted to the Department of Human Services.

(2) A person described in this section may have only one designated primary caregiver at any given time. [1999 c.4 §13]

**Note:** See note under 475.300.

**475.315** [1977 c.636 §2; 1979 c.674 §2; repealed by 1993 c.571 §30]

**475.316 Limitations on cardholder's immunity from criminal laws involving marijuana.** (1) No person authorized to possess, deliver or produce marijuana for medical use pursuant to ORS 475.300 to 475.346 shall be excepted from the criminal laws of this state or shall be deemed to have established an affirmative defense to criminal charges of which possession, delivery or production of marijuana is an element if the person, in connection with the facts giving rise to such charges:

- (a) Drives under the influence of marijuana as provided in ORS 813.010;
- (b) Engages in the medical use of marijuana in a public place as that term is defined in ORS 161.015, or in public view or in a correctional facility as defined in ORS 162.135 (2) or youth correction facility as defined in ORS 162.135 (6);
- (c) Delivers marijuana to any individual who the person knows is not in

possession of a registry identification card;

(d) Delivers marijuana for consideration to any individual, even if the individual is in possession of a registry identification card;

(e) Manufactures or produces marijuana at a place other than one address for property under the control of the patient and one address for property under the control of the primary caregiver of the patient that have been provided to the Department of Human Services; or

(f) Manufactures or produces marijuana at more than one address.

(2) In addition to any other penalty allowed by law, a person who the department finds has willfully violated the provisions of ORS 475.300 to 475.346, or rules adopted under ORS 475.300 to 475.346, may be precluded from obtaining or using a registry identification card for the medical use of marijuana for a period of up to six months, at the discretion of the department. [1999 c.4 §5; 1999 c.825 §3]

**Note:** See note under 475.300.

**475.319 Affirmative defense to certain criminal laws involving marijuana available to cardholder.** (1) Except as provided in ORS 475.316 and 475.342, it is an affirmative defense to a criminal charge of possession or production of marijuana, or any other criminal offense in which possession or production of marijuana is an element, that the person charged with the offense is a person who:

(a) Has been diagnosed with a debilitating medical condition within 12 months prior to arrest and been advised by his or her attending physician the medical use of marijuana may mitigate the symptoms or effects of that debilitating medical condition;

(b) Is engaged in the medical use of marijuana; and

(c) Possesses or produces marijuana only in the amounts allowed in ORS 475.306 (1), or in excess of those amounts if the person proves by a preponderance of the evidence that the greater amount is medically necessary as determined by the person's attending physician to mitigate the symptoms or effects of the person's debilitating medical condition.

(2) It is not necessary for a person asserting an affirmative defense pursuant to this section to have received a registry identification card in order to assert the affirmative defense established in this section.

(3) No person engaged in the medical use of marijuana who claims that marijuana provides medically necessary benefits and who is charged with a crime pertaining to such use of marijuana shall be precluded from presenting a defense of choice of evils, as set forth in ORS 161.200, or from presenting

evidence supporting the necessity of marijuana for treatment of a specific disease or medical condition, provided that the amount of marijuana at issue is no greater than permitted under ORS 475.306 and the patient has taken a substantial step to comply with the provisions of ORS 475.300 to 475.346.

(4) Any defendant proposing to use the affirmative defense provided for by this section in a criminal action shall, not less than five days before the trial of the cause, file and serve upon the district attorney a written notice of the intention to offer such a defense that specifically states the reasons why the defendant is entitled to assert and the factual basis for such affirmative defense. If the defendant fails to file and serve such notice, the defendant shall not be permitted to assert the affirmative defense at the trial of the cause unless the court for good cause orders otherwise. [1999 c.4 §6; 1999 c.825 §4]

**Note:** See note under 475.300.

**475.323 Effect of possession of registry identification card or designated primary caregiver card on search and seizure rights.** (1) Possession of a registry identification card or designated primary caregiver identification card pursuant to ORS 475.309 shall not alone constitute probable cause to search the person or property of the cardholder or otherwise subject the person or property of the cardholder to inspection by any governmental agency.

(2) Any property interest possessed, owned or used in connection with the medical use of marijuana or acts incidental to the medical use of marijuana that has been seized by state or local law enforcement officers shall not be harmed, neglected, injured or destroyed while in the possession of any law enforcement agency. A law enforcement agency has no responsibility to maintain live marijuana plants lawfully seized. No such property interest may be forfeited under any provision of law providing for the forfeiture of property other than as a sentence imposed after conviction of a criminal offense. Usable marijuana and paraphernalia used to administer marijuana that was seized by any law enforcement office shall be returned immediately upon a determination by the district attorney in whose county the property was seized, or his or her designee, that the person from whom the marijuana or paraphernalia used to administer marijuana was seized is entitled to the protections contained in ORS 475.300 to 475.346. Such determination may be evidenced, for example, be a decision not to prosecute, the dismissal of charges, or acquittal. [1999 c.4 §8; 1999 c.825 §5]

**Note:** See note under 475.300.

**475.325** [1977 c.636 §3; 1979 c.674 §3; repealed by 1993 c.571 §30]

**475.326 Attending physician; limitation on civil liability and professional discipline.** No attending physician may be subjected to civil penalty or discipline by the Board of Medical Examiners for:

(1) Advising a person whom the attending physician has diagnosed as having a debilitating medical condition, or a person who the attending physician knows has been so diagnosed by another physician licensed under ORS chapter 677, about the risks and benefits of medical use of marijuana or that the medical use of marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, provided the advice is based on the attending physician's personal assessment of the person's medical history and current medical condition; or

(2) Providing the written documentation necessary for issuance of a registry identification card under ORS 475.309, if the documentation is based on the attending physician's personal assessment of the applicant's medical history and current medical condition and the physician has discussed the potential medical risks and benefits of the medical use of marijuana with the applicant. [1999 c.4 §9]

**Note:** See note under 475.300.

**475.328 Limits on professional licensing board's authority to sanction licensee for medical use of marijuana.** (1) No professional licensing board may impose a civil penalty or take other disciplinary action against a licensee based on the licensee's medical use of marijuana in accordance with the provisions of ORS 475.300 to 475.346 or actions taken by the licensee that are necessary to carry out the licensee's role as a designated primary caregiver to a person who possesses a lawful registry identification card issued pursuant to ORS 475.309. [1999 c.4 §10]

(2) (a) **A licensed health care professional may administer medical marijuana to a registered patient currently residing in a licensed health care facility if the administration of pharmaceuticals is consistent with the professional's scope of practice. Administration may not be in a public place as defined in ORS 161.015, must not expose individuals under eighteen years old, and if inhaled, must provide for adequate ventilation.**

**(b) Nothing in this Section requires a licensed health care professional to administer medical marijuana.**

**(c) Nothing in this Section requires as licensed health care facility to make accommodations for patients to use medical marijuana. If the facility chooses to do so, all other provisions of the Act apply.**

**Note:** See note under 475.300.

**475.331 List of persons issued registry identification cards and designated primary caregivers; disclosure.** (1) The Department of Human Services shall create and maintain a list of the persons to whom the department has issued registry identification cards pursuant to ORS 475.309 and the names of any designated primary caregivers. Except as provided in subsection (2) of this section, the list shall be confidential and not subject to public disclosure.

(2) Names and other identifying information from the list established pursuant to subsection (1) of this section may be released to:

(a) Authorized employees of the department as necessary to perform official duties of the department; and

(b) Authorized employees of state or local law enforcement agencies, only as necessary to verify that a person is a lawful possessor of a registry identification card or that a person is the designated primary caregiver of such a person. [1999 c.4 §12]

**(c) Prior to the release of verification information, a law enforcement officer must provide a badge number or other acceptable identification to the program to confirm authorization.**

**(d) Law enforcement officials and agencies receiving such information may not release it or use it for purposes other than the verification of patient or caregiver information.**

**(e) The department shall develop a query only system to ensure the ability of authorized employees of state and local law enforcement agencies to verify at all times that a person is a lawful possessor of a registry identification card, that a person is the designated primary caregiver of such a person, or that an address is registered as a grow-site.**

**Note:** See note under 475.300.

**475.334 Adding diseases or conditions that qualify as debilitating medical conditions; rules.** Any person may submit a petition to the

Department of Human Services requesting that a particular disease or condition be included among the diseases and conditions that qualify as debilitating medical conditions under ORS 475.302. The department shall adopt rules establishing the manner in which the department will evaluate petitions submitted under this section. Any rules adopted pursuant to this section shall require the department to approve or deny a petition within 180 days of receipt of the petition by the department. Denial of a petition shall be considered a final department action subject to judicial review. [1999 c.4 §14]

**Note:** See note under 475.300.

**475.335** [1977 c.636 §4; 1979 c.674 §4; repealed by 1993 c.571 §30]

**475.338 Rulemaking.** The Department of Human Services shall adopt all rules necessary for the implementation and administration of ORS 475.300 to 475.346. [1999 c.4 §15]

**Note:** See note under 475.300.

**475.340 Limitations on reimbursement of costs and employer accommodation. (1)** Nothing in ORS 475.300 to 475.346 shall be construed to require:

(1) **(a)** A government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana;

(2) **(b)** An employer to accommodate the medical use of marijuana in any workplace.

**(2) Patient registration by itself shall not constitute grounds for termination of employment.** [1999 c.4 §16]

**Note:** See note under 475.300.

**475.342 Limitations on protection from criminal liability.** Nothing in ORS 475.300 to 475.346 shall protect a person from a criminal cause of action based on possession, production, or delivery of marijuana that is not authorized by ORS 475.300 to 475.346. [1999 c.4 §11]

**Note:** See note under 475.300.

**475.343 Administrative Work Group.** (1) The Department shall create an Administrative Work Group consisting of not less than eleven individuals representing patients, caregivers and advocates of the Oregon Medical Marijuana Act.

(2) The work group shall provide advice on the administrative aspects of the Oregon Medical Marijuana Program, review proposed permanent rules prior to rule making, and at least annually provide input on fee structure.

(3) The work group shall meet at least four times each calendar year.

**475.345** [1977 c.636 §5; 1979 c.674 §5; repealed by 1993 c.571 §30]

**475.346 Short title.** ORS 475.300 to 475.346 shall be known as the Oregon Medical Marijuana Act. [1999 c.4 §1]

**Note:** See note under 475.300.

**475.355** [1977 c.636 §6; 1979 c.674 §6; repealed by 1993 c.571 §30]

**475.360** [1979 c.674 §10; repealed by 1993 c.571 §30]

**475.365** [1977 c.636 §7; 1979 c.674 §7; repealed by 1993 c.571 §30]

**475.375** [1977 c.636 §8; 1979 c.674 §8; repealed by 1993 c.571 §30]