

THC: To Cap or Not to Cap; That Is the Question

CANNABIS LAW | FEBRUARY 28, 2020



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House Speaker Jose Oliva announced on February 13, 2020, that establishing THC limits in all medical marijuana products sold to patients in Florida is a priority for the Florida House of Representatives this year. Citing health concerns, especially for youth, and changes in potency over the last several decades as new strains of marijuana are cultivated and concentrated products are developed, Oliva is recommending a 10% potency cap on all medical marijuana products sold in Florida. This week, Sen. Gayle Harrell introduced an amendment to SB 230 to cap the concentration of THC in medical marijuana products at 10% for products dispensed to patients who are under the age of 21. If such legislation is enacted, Florida would become the first state in the country with an expanded medical marijuana market to establish potency caps for products based on the percentage of THC in the product.

THC potency limits do exist in the United States, but only in states that have limited the use of medical marijuana to low-THC products. In fact, Florida used to have a THC limit on all medical marijuana products. When the Compassionate Medical Cannabis Act of 2014 authorized the use of low-THC medical marijuana products by qualified patients in Florida, the across-the-board THC cap for the products used by patients was 0.8%. There are currently 14 states where the use of medical marijuana by qualified patients is authorized but the available products contain less than 1% THC. No state that has moved beyond low-THC products, like Florida currently, has then gone back and placed a THC limit on all available medical marijuana products.

Some states have adopted single serving and total package THC limits for edible products such as candy bars and gummy bears. Importantly, those limits are based on total THC content in a milligram measurement per serving or package, not a percentage. For example, several states have placed limits on single serving and total package THC content through milligram restrictions to reduce risks associated with accidental ingestion by children. In Colorado and Washington, each serving or square of a candy bar infused with THC is limited to 10 milligrams and the entire candy bar itself can contain no more than 100 milligrams. In Oregon and Alaska, those limits are even more conservative at 5 milligrams per serving and 50 milligrams per package.

Currently, Florida law requires licensed physicians and patients to work together to determine how much THC and through which route of administration provides the most benefit to the patient's underlying medical condition. When a patient obtains his or her physician certification that enables the patient to purchase medical marijuana products, the physician places a limit on the total amount of THC, in milligrams, the patient is allowed to purchase over the next 70 days. Thus, regardless of the potency of the product the patient chooses to purchase, the relationship between physician and patient is defined by total THC ordered in milligrams (or ounces in the case of marijuana in a form for smoking), not percentage.

Further, Florida law currently requires that every medical marijuana patient return to his or her physician every 30 weeks for a follow-up. During those return visits, the law requires licensed Florida physicians to evaluate whether the patient continues to need medical marijuana and whether any adverse reactions have occurred. The physician must then send that evaluation to the Department of Health, which then is required to share the information with the Physician Certification Pattern Review Panel, a panel made up of members of the Florida boards of Medicine and Osteopathic Medicine that produces a report to the Legislature annually. Each of the two annual reports issued since the panel came into existence contains recommendations as required by statute, but none addresses a limit on THC content in products. This methodology of evaluation and reporting seems to be working very well.

Whether Florida will become the first state to place potency limits on all medical marijuana products used by qualified patients will be decided within the coming weeks as the Florida Legislature winds to a close. The first discussion is likely to take place in the Senate Rules Committee hearing on March 2, 2020, when SB 230 is scheduled to be considered. If a potency cap does pass, easing the tension for physicians and patients between the amount of THC necessary to counteract the symptoms of an underlying medical condition and the cost of obtaining that amount in light of the potency cap will be a priority for all involved in the industry. If prior experience with medical marijuana in Florida is an indicator, though, the first order of business will likely be determining whether a potency cap is consistent with the provisions of the constitutional amendment authorizing the use of medical marijuana by qualified patients.

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