

Medical Marijuana Policies in Multiunit Residential Buildings in Colorado

Note: Nothing in this paper shall constitute legal advice. Please consult an attorney before implementing any policies related to the use of medical marijuana in multiunit housing.

Colorado Law and Medical Marijuana

House Bill 10-1284 covers the medical use of marijuana for persons suffering from debilitating medical conditions. The law limits the medical use of marijuana as follows:

Section (5) (a): A patient or primary caregiver shall not:

(I) Engage in the medical use of marijuana in a way that endangers the health or well-being of any person; or (II) Engage in the medical use of marijuana in plain view of, or in a place open to, the general public; and b) Nothing in this section shall require any employer to accommodate the medical use of marijuana in any work place.

The Colorado Clean Indoor Air Act was revised in 2010 and smoking is defined in section 25-14-203: "Smoking" means the burning of a lighted cigarette, cigar, pipe or any other matter or substance that contains tobacco or medical marijuana as defined by section 12-43.3-104 (7). Section 25-14-206 (1) allows landlords to make any part of their property non-smoking and section 25-14-204 (p) & (u) prohibits smoking in all indoor common areas.

25-14-206. Optional prohibitions. (1) The owner or manager of any place not specifically listed in section 25-14-204, including a place otherwise exempted under section 25-14-205, may post signs prohibiting smoking or providing smoking and nonsmoking areas. Such posting shall have the effect of including such place, or the designated nonsmoking portion thereof, in the places where smoking is prohibited or restricted pursuant to this part 2.

Medical Marijuana in Marketplace Housing

If a multiunit residential building is advertised as a no-smoking or smoke-free, the smoking of medical marijuana should be prohibited inside the building for the same reasons tobacco smoke is prohibited inside the building. Allowing the smoking of medical marijuana may generate resident complaints due to drifting smoke, cause harm to the health of other residents, result in a false advertising complaints, and may lead to fair housing act complaints or lawsuits. Lease agreements in non-smoking buildings should clearly define smoking and where it is allowed, if it is allowed anywhere on the property. A multiunit residential building that allows medical marijuana smoking in any unit would not meet the listing guidelines at mysmokefreehousing.com.

Medical Marijuana in Public Housing

A [February 2011 HUD memo](#) provides these guidelines:

For new admissions: "The Quality Housing and Work Responsibility Act (QHWRA) of 1998 (42 U.S.C. § 13661) requires that PHAs administering the Department's rental assistance programs establish standards and lease provisions that prohibit admission into the PH and HCV programs based on the illegal use of controlled substances, including state legalized medical marijuana. State laws that legalize medical marijuana directly conflict with the admission requirements set forth in QHWRA and are thus subject to federal preemption."

For existing residents: “QHWRA requires PHAs to establish occupancy standards and lease provisions that will allow the PHA to terminate assistance for use of a controlled substance. However, the law does not compel such action and PHAs have discretion to determine continued occupancy policies that are most appropriate for their local communities. PHAs can also determine whether to deny assistance to or terminate individual medical marijuana users, rather than entire households, for both applicant and existing residents when appropriate. PHAs have discretion to determine, on a case-by-case basis, the appropriateness of program termination of existing residents for the use of medical marijuana.”

The memo also requires PHAs to establish a written policy on usage (except for new admissions), but leaves the responsibility up to the PHAs and not HUD.

Is Secondhand Marijuana Hazardous to the Health?

In June 2002, a panel of experts brought together by the International Agency for Research on Cancer (an agency of the World Health Organization) determined that secondhand marijuana smoke causes cancer. The Canadian Cancer Society asserts that marijuana and cigarette smoke contain as many as 50 of the same cancer causing substances. For these reasons, experts believe that exposure to secondhand marijuana smoke is at least as harmful as secondhand tobacco smoke. The [Canadian Cancer Society](#) recommends that exposure to marijuana smoke should be avoided given the strength of expert opinion; the fact that marijuana and cigarette smoke contain as many as 50 of the same cancer causing substances; and the probability of harm associated with long-term use of marijuana and with exposure to secondhand marijuana smoke,”



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