

## Planting the Seeds: The Present State and Potential Prospects of Medical Cannabis in Tennessee

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In 1996, California became the first state to legalize medical cannabis. Since then, 36 states (and four U.S. territories) have followed suit, keeping pace with rapidly evolving policies and attitudes toward cannabis. In addition to the widespread legalization of medical cannabis, 18 states, two territories, and the District of Columbia have legalized cannabis for adult use.

As one of 14 states that have not legalized medical cannabis under state law, Tennessee is in the minority, even in the South. In fact, five of Tennessee's neighboring states have legalized cannabis for either medical (Alabama, Arkansas, Georgia, and Missouri) or adult use (Virginia). And Mississippi appears to be on the verge of legalizing medical cannabis, too (as we've written about [here](#), [here](#), and [here](#)).

Tennessee's current policy regarding cannabis does not appear to reflect the attitudes of its voters. According to a 2018 poll conducted by Middle Tennessee State University, most Tennesseans (approximately 81%) support some form of legalization, with 44% supporting medical use and 37% supporting adult-use legalization. This widespread popularity has even caught the attention of some Tennessee state representatives who are personally opposed to legalizing medical cannabis.

For example, Rep. Bruce Griffey (R-D75) introduced [legislation](#) last July that would have required county election commissions to place three non-binding questions on the ballot asking voters whether Tennessee should (1) decriminalize possession of small amounts of marijuana; (2) legalize medical marijuana; or (3) legalize adult-use marijuana. Rep. Griffey released a statement clarifying that while he was personally "against the legalization of marijuana," his "personal opinion should not dictate" that marijuana remains illegal under state law if legalization is what Tennessee voters want.

So where does Tennessee stand on medical cannabis now? And where might it head? These questions are the focus of this article, which is the first in our series on cannabis in Tennessee.

### Wait, Tennessee Already Has a Medical Cannabis Program?

Some readers may be surprised to learn that Tennessee technically has a medical cannabis program

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in place. Legislation that took effect in May 2021 allows individuals with certain qualifying conditions and a physician's recommendation to possess cannabidiol (CBD) oil containing up to 0.9% THC. Notably, Tennessee's 0.9% THC threshold is three times greater than the 0.3% THC limit for legal "hemp" under federal law (which we wrote about [here](#)). The 0.3-0.9% THC oil authorized by Tennessee law thus qualifies as federally illegal "marijuana" under the Controlled Substances Act.

In practical terms, Tennessee's program is so limited that it does little to change the status quo. The program's underlying issue is that it does not provide for in-state production of CBD oil containing THC greater than the 0.3% federal limit. As a result, qualified Tennessee patients must procure their "medical cannabis" oil outside the state. Coupling this in-state production ban with the restrictive 0.9% THC limit shows Tennessee's current statutory regime to be a "medical cannabis program" in name only.

## **Tennessee Medical Cannabis Commission – An Important First Step**

But change may be on the horizon. The same statute that minimally expanded Tennessee's medical cannabis program also established Tennessee's Medical Cannabis Commission, whose [purpose](#) is to "serve as a resource for the study of federal and state laws regarding medical cannabis and the preparation of legislation to establish an effective, patient-focused medical cannabis program[.]" But the statute does not yet "authorize a medical cannabis program to operate" in Tennessee, and "licenses for such a program shall not be issued ... until marijuana is removed from Schedule I of the federal Controlled Substances Act."

The statute directs the Commission to "examine federal laws, the effectiveness of other states' laws and legislation, and laws and legislation in [Tennessee] relating to the medical use of cannabis," and requires that the Commission consider issues relating to many broad categories, [including](#):

- Which patients should qualify for medical cannabis
- How patients should apply to receive medical cannabis
- What physicians, nurse practitioners, and physician assistants' respective roles are in recommending and prescribing medical cannabis
- What pharmacists' roles are in recommending, prescribing, and dispensing cannabis
- Licensing and regulating "cultivation, processing, labeling, transporting, shipping, and distributing" medical cannabis
- Product safety testing
- What the role of various state departments, agencies, and boards in regulating medical cannabis is
- What law enforcement's role is in medical cannabis
- Taxes and fees for medical cannabis
- Developing a "recommended standard of care" for medical cannabis

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- Patient reciprocity with other states that have legalized medical cannabis under state law

The statute requires that the Commission prepare recommendations for “how best to establish an effective, patient-focused medical cannabis program,” along with proposed legislation that must “create an independent and financially self-sufficient Commission ... to administer the program.” The Commission must submit a report containing these recommendations and proposals to the Tennessee Legislature by January 1 of each year. The Commission has already provided the 2021 report to the Legislature, but it has not yet been made public.

The Commission’s meetings are open to the public and live-streamed. The next meeting is set for [January 28, 2022, 9 a.m. CT](#).

## Big Picture Questions for the Commission

Given the Commission’s statutory role is to craft a true medical cannabis program based on their analysis of what works and what doesn’t among current medical cannabis states, it is critically important for the cannabis industry to begin educating the Commission on those points. While there are numerous questions the Commission must analyze to craft an effective program, some of the biggest are:

- **Will Tennessee adopt a “limited-license” or “open-license” regime?** Under a limited-license regime, states authorize a limited number of licenses to cultivate, process, or dispense cannabis, which are issued following a competitive application process. Under an open-license regime, states provide licenses to all companies that meet the regulatory standards. Examples of limited-license states include Alabama (which we’ve written about [here](#)). Examples of open-license states include [Oklahoma](#).
- **Will there be a social equity component?** Social equity provisions in cannabis statutes take many forms. From the minority-owned business perspective, the most important types are those that require the state’s licensing authority to issue a certain number of licenses to such businesses (Alabama has adopted this [model](#)). More broadly, many states’ cannabis statutes provide for expungement of past cannabis offenses and/or direct cannabis tax revenue to communities impacted by the War on Drugs.
- **What will be the qualifying conditions for patients to obtain a medical card?** Tennessee’s current statute allows patients with the following conditions to obtain 0.9% THC oil: (1) Alzheimer’s disease; (2) amyotrophic lateral sclerosis (ALS); (3) cancer, when such disease is diagnosed as end-stage or the treatment produces related wasting illness, nausea and vomiting, or pain; (4) inflammatory bowel disease, including Crohn’s disease and ulcerative colitis; (5) epilepsy or seizures; (6) multiple sclerosis; (7) Parkinson’s disease; (8) human immunodeficiency virus (HIV) or acquired immunodeficiency syndrome (AIDS); and (9) sickle cell disease. The Commission seems likely to explore expansions to this list.
- **Will Tennessee impose a residency requirement for cannabis licensees?** Many states only issue cannabis licenses to companies with majority ownership attributable to in-state residents. Whether these residency requirements pass muster under the U.S. Constitution is far from clear (as we’ve written about [here](#)).

- **Will Tennessee allow patient reciprocity?** Some states, such as Arkansas, allow patients from other states to obtain a visitor's card that allows them to purchase medical cannabis in the state. Other states do not provide for such "visitor cards."
- **Will Tennessee authorize a true medical cannabis program before marijuana is de-scheduled at the federal level?** This is anyone's guess. As noted above, Tennessee's current statute makes federal de-scheduling a prerequisite for the expansion of medical cannabis in Tennessee. But the legalization tide is moving quickly, even in the South, and one can imagine the tax revenue in neighboring states incentivizing the Tennessee Legislature to expedite the process if Washington gridlock continues to delay cannabis reform at the federal level.

## Takeaways

While the timeline for medical cannabis legalization in Tennessee appears long, history shows that it doesn't take much for legalization efforts to pick up speed. Tennessee establishing the Medical Cannabis Commission is an important first step, and one that the industry hopes will allow for Tennessee to avoid some of the mistakes its sister states have made as those states stood up their respective programs.

We will continue to monitor the Commission's meetings and write about the evolving legal landscape for medical cannabis in Tennessee.

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