



# **Marijuana in Public Housing**

## **Medical | Recreational | Legislation**

# Marijuana in Public Housing

- On August 1, 2013 Pat Quinn signed the Compassionate Use of Medical Cannabis Pilot Program Act which legalized the use of medical marijuana in Illinois
- On May 31, 2019 the Illinois General Assembly passed HB 1438 legalized the use of recreational marijuana
- Gov. Pritzker signed the bill into law on June 25, 2019
- The law goes into effect on January 1, 2020
- Illinois is the 11<sup>th</sup> state to legalize recreational marijuana use
- What does it all mean for PHA participants?

# Marijuana in Public Housing

- This presentation will address four major areas of concern for public housing residents:
  - The basic provisions of the Illinois law
  - Define recreational use vs. medicinal use
  - Clarify the federal restrictions of the use of marijuana
  - Affects on residents of public housing
- After the presentation, we'll open it up for comments/questions!



# Provisions of the Illinois Law

# Provisions of the Illinois Law

- Adults aged 21 and over will be able to purchase marijuana for recreational use
- Purchase and possession limits for Illinois residents:
  - 30 grams of marijuana plant material
  - Edibles totaling no more than 500 mg of THC
  - 5 grams of cannabis concentrate product
- Only medical marijuana patients will be able to grow plants at home –five plant limit
- Only licensed medical marijuana cultivators and dispensaries will be able to sell marijuana

# Provisions of the Illinois Law

- Areas where smoking marijuana is prohibited:
  - **Any public place, such as streets and parks**
  - **In any motor vehicle**
  - **On school grounds**
  - **Near someone under the age of 21**
  - **Near on-duty school bus drivers, police officers, firefighters, or correctional officers**
- Consumption is legal in private residences
- Local jurisdictions will be allowed to determine if dispensaries will allow people to smoke on-site

# Provisions of the Illinois Law

- Any person, business, or landlord can prohibit use on private property
- State universities or colleges will also be able to ban marijuana use
- Consumers pay up to 34.75% sales tax, depending on THC potency
- State revenue to be used on records expungement, drug treatment and enforcement, improvement of mental health treatment access, and to bolster the general fund.



# Recreational v. Medicinal



# Recreational v. Medicinal

- Recreational refers to the intentional consumption of marijuana
- Medical marijuana uses the marijuana plant, or the chemicals found in it, to treat diseases or disorders
- The marijuana plant contains more than 100 different chemicals, called “cannabinoids,” and each has a different effect on the body
- Delta-9-tetrahydrocannabinol (THC) and cannabidiol (CBD) are the main chemicals used in medicine
- THC produces the “high” people feel when consumed

# Recreational v. Medicinal

- Medical marijuana is used to treat a number of medical conditions:
  - Alzheimer's disease
  - Cancer \*
  - Crohn's disease
  - Epilepsy
  - Glaucoma
  - Multiple sclerosis
  - Muscle spasms \*
  - Pain management (most common use) \*

# Recreational v. Medicinal

- Medical marijuana is consumed in the following ways:
  - Inhalation
  - Smoking
  - Orally
  - Application to the skin

# Recreational v. Medicinal

- Marijuana use, both recreational and medicinal, is also associated with the following negative side effects:
  - Depression
  - Dizziness
  - Heart palpitations
  - Hallucinations
  - Low blood pressure
  - Affects coordination
  - Impairs judgment
  - Hinder mental function and IQ



# Federal Restrictions

# Federal Restrictions

- Despite legalization in the State of Illinois, marijuana possession and use remains prohibited by federal law and thus by extension in federally-assisted (public) housing
- Medicinal use is a much more complex issue
- Guidance is dated, but provides clarification on the issue of marijuana use – both recreational and medical – federally assisted housing

# Federal Restrictions

- In 1998, President Bill Clinton signed the Quality Housing and Work Responsibility Act (QHWRA) into law
- QHWRA forbids landlords of federally-subsidized housing from admitting applicants who use illegal substances
- QHWRA further required such landlords develop policies that allowed for eviction of participant families for drug-related criminal activity

# Federal Restrictions

- What constitutes drug-related criminal activity regarding marijuana:
  - Possession
  - Use
  - Sale
  - Manufacture
  - Distribution
  - Intent



# Federal Restrictions

- 42 U.S. Code §13662 calls for the termination of tenancy for the use of controlled substances
- 21 U.S. Code – The Controlled Substances Act (CSA) identifies marijuana as a controlled substance for federal purposes
- The federal government considers marijuana a “substance with a very high potential for abuse and no accepted medical purpose in the United States.”

# Federal Restrictions

- HUD has issued three memos of significance regarding the use of medical marijuana in public housing:
  - January 20, 2011
    - Medical Use of Marijuana and Reasonable Accommodation
  - February 10, 2011
    - Medical Marijuana Use in PH and HCV Programs
  - December 29, 2014
    - Use of Marijuana in Multifamily Properties

# Federal Restrictions

- January 20, 2011
  - Medical Use of Marijuana and Reasonable Accommodation
    - In the event that state laws are construed as to require PHAs to permit medical marijuana use as a reasonable accommodation, those laws are subject to preemption by federal law
    - Preemption is the rule of law that if the federal government through Congress has enacted legislation on a subject matter it shall be controlling over state laws and/or preclude the state from enacting laws on the same subject if Congress has specifically declared it has "occupied the field."

# Federal Restrictions

- January 20, 2011
  - Medical Use of Marijuana and Reasonable Accommodation
    - Under Section 504 and the ADA, current illegal drug users, including medical marijuana users, are excluded from the definition of “individuals with a disability” when the provider acts solely on the basis of the illegal drug use.
    - Though otherwise disabled medical marijuana users are not excluded from the Fair Housing Act’s definition of “handicap,” accommodations allowing for the use of medical marijuana in public housing are **not** considered reasonable

# Federal Restrictions

- January 20, 2011
  - Medical Use of Marijuana and Reasonable Accommodation
    - PHAs may not grant reasonable accommodation requests that would allow tenants to grow, use, possess, or distribute medical marijuana
    - PHAs have discretion with respect to evicting or refraining from evicting current residents on account of their use of medical marijuana

# Federal Restrictions

- February 10, 2011
  - Medical Marijuana Use in PH and HCV Programs
    - New admissions of medical marijuana users are prohibited in public housing and housing choice voucher programs

# Federal Restrictions

- February 10, 2011
  - Medical Marijuana Use in PH and HCV Programs
    - PHAs required to establish occupancy standards and lease provisions that allow PHA to terminate tenancy and assistance for the use of a controlled substance
      - QHWRA does not compel PHAs to terminate assistance
      - PHAs have discretion in establishing policies appropriate for their jurisdiction
      - The decision of whether or not to allow continued occupancy to medical marijuana users is the responsibility of the PHA

# Federal Restrictions

- December 29, 2014
  - Use of Marijuana in Multifamily Properties
    - Because the Controlled Substances Act prohibits *all* forms of marijuana use, the use of medical marijuana is illegal under federal law even if it is permitted by state law.
    - Reiterates requirements of QHWRA



# Federal Restrictions

- Conclusions
  - Recreational possession and use of marijuana is prohibited in public housing regardless of state law
  - Medical possession and use of marijuana is not protected under the Fair Housing Act, the Americans with Disabilities Act, or Section 504 of the Rehabilitation Act of 1973
  - PHAs may not grant a reasonable accommodation which permits the use of a controlled substance
  - PHAs have discretion to terminate/not terminate tenancy of residents engaging in the use of medical marijuana

# Federal Restrictions

- Federal law has been recently challenged on the use of medical marijuana in public housing
- Emma Nation v. Donald Trump, et al
  - Filed July 02, 2018 in the U.S. District Court, Northern District of California
  - This case sought to alter the Federal Government's contradictory position of declaring cannabis having "no currently accepted medical use" while approving a prescription derived from the cannabis plant as a medicine

# Federal Restrictions

- Emma Nation v. Donald Trump, et al
  - Congress established a process for reclassification of controlled substances, vesting the Attorney General with the power to reschedule a drug “on the record after opportunity for a hearing”
  - The Court agreed with other courts that have found that the process set forth in the CSA is the exclusive method to challenge classification decisions
  - Case was dismissed due to failure to exhaust remedies prescribed within the CSA

# Federal Restrictions

- The winds of change may be blowing however...
  - Officials at the Department of Housing and Urban Development have sounded off that federal and state regulations needed to “catch up” and allow the use of medical marijuana
  - Lawmakers have suggested that federal law should be changed to reflect the changing views of Americans in regards to cannabis policy

# Federal Restrictions



**Lynne Patton (HUD)** ✓  
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Replying to [@MollyParkerSI](#)

State & federal law needs to catch up with medicinal marijuana usage & require private landlords to legally permit the same. Period. Regardless, my team is already working with Mr. Flickner & a local grantee to place him in permanent housing again, as anyone else in his boat.

11:16 AM · Dec 9, 2018 · [Twitter for iPhone](#)

# Federal Restrictions

- H.R. 2338 – 116<sup>th</sup> Congress
  - Marijuana in Federally Assisted Housing Parity Act of 2019
  - Introduced by Rep. Eleanor Norton (D-D.C.) and cosponsored by Rep. Janice Schakowsky (D-IL) and Rep. Bobby Rush (D-IL)

# Federal Restrictions

- H.R. 2338 – 116<sup>th</sup> Congress
  - This bill specifies that:
    - (1) an individual may not be denied occupancy of federally assisted housing on the basis of using marijuana in compliance with state law, and
    - (2) the Department of Housing and Urban Development may not prohibit or discourage the use of marijuana in federally assisted housing if such use is in compliance with state law.

**THIS BILL HAS NOT BEEN SIGNED INTO LAW!**



# Affect on Public Housing



# Affect on Public Housing

- The lease and addendum will be amended to include language referencing “federally-assisted premises” as it pertains to the possession, use, manufacture, and distribution of marijuana
- The use, possession, manufacture, and distribution of marijuana *on federally-assisted premises* **will** be cause for automatic termination of your lease
- The legal use, possession, manufacture, and distribution of marijuana *away from federally-assisted premises* will **not** be cause for automatic termination of your lease

# Affect on Public Housing

- The KCHA will develop a “Medical Marijuana Policy” to set process and procedures for working with licensed medical marijuana users
- Current residents legally using medical marijuana will **not** be subject to automatic termination
- Medical marijuana use on federally-assisted premises will be restricted to edibles, topicals, and orally ingestion. Smoking marijuana will not be permitted in accordance with the KCHA Smoke Free Public Housing policy.

# Affect on Public Housing

- All applicable circumstances will be considered when determining whether or not to terminate tenancy or assistance
- A letter fully explaining the agency's position will be mailed to all participants of the public housing and housing choice voucher programs
- These policy changes will be in effect 01/01/2020
- If you have questions or require further clarification, please communicate with the KCHA **prior to** violating lease or policy provisions

# Questions?

