

The New Medical Marijuana Regulations

Health Canada has published a new regulation governing who can get access to marijuana for medicinal purposes, and who can grow it. It came into effect on July 30, 2001. For PHAs, the new regulation makes it a little bit harder to get permission to use marijuana legally, and a lot harder to get weed to smoke.

Under the new regulation, if you want to smoke marijuana for medicinal purposes, you have to apply for an exemption. An application to get a medical marijuana exemption must include the name of your marijuana supplier. Your supplier must be a licensed provider under the regulation. The Compassion Clubs were not included as licensed providers. If you cannot name a licensed provider, you are only authorized to possess marijuana you have grown yourself.

The maximum amount of dried marijuana you are allowed to possess with an exemption is 30 times your daily prescribed dose. So, if your physician has prescribed 0.5 grams per day, you are only authorized to possess 30 times 0.5 grams, or 15 grams.

If you are caught in possession of more than that, the exemption does not apply and you can be charged with an offence.

It has always been the case that to get an exemption, your doctor has to fill out a form supporting your need for the exemp-

tion. which states that “the recommended use of marijuana would mitigate the symptom” that the patient is complaining about. That’s a problem because there is no medical literature or studies that a doctor can turn to for support for such a conclusion. In other words, doctors might think it will work because their patients say so, but requiring them to say for a fact that it **will** help is asking an awful lot. Nobody expects a physician to say that any other drug will for a fact, help your problem. The best that physicians can be expected to say for any drug is that their training and experience and the information available to them indicates that taking a particular drug is a good idea.

If you want to grow marijuana for yourself, you must also apply for a “personal-use production licence” in addition to your exemption. If someone else is going to grow your marijuana for you, they must apply for a “designated-person production licence”. A designated-person licence is only granted to someone who does not charge any money to you for marijuana and is themselves applying for an exemption or already has one. The problem is that a licensed grower is only allowed to grow enough marijuana for themselves and one other person with an exemption. If you want to try and work together with other exemption holders to grow marijuana, you can only work with a maximum of two other licence holders. Your physician is allowed to dispense marijuana to you if you have an exemption, but only if they have obtained the marijuana from a licensed dealer.

Under the new regulations, family physicians can only complete the form if you are applying as a Category 1 symptom applicant. (Category 2 applicants require a specialist to fill out the form.) Category 1 symptom applicants are people who have symptoms as a result of a terminal illness so PHAs can apply as category 1 applicants. But if your exemption is issued under the Category 1 symptom class, you can only get one renewal of your exemption. The maximum amount of time on an exemption is twelve months. So, if your family physician does the application and the renewal request, after 24 months with an exemption, to get another one, you must have a specialist fill out the forms. Your family doctor will not be able to help you apply a third time.

The real problem from physician’s point of view is that they have to fill out a form



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The "Industry of the Living Dead" Comes to Ontario

On July 12, 2001, the Financial Services Commission of Ontario (FSCO) published a draft regulation for people to comment on. The draft regulation sets out a licensing scheme for viatical settlement companies. A viatical settlement is a deal where a person with a life expectancy of two years or less sells their life insurance policy for a percentage of the face value of the policy. Say for example, you have a life insurance policy for \$100,000. Your doctor says you have less than two years to live probably. So you go to a viatical settlement company and sell them your policy. They pay you anywhere from \$60,000 to \$80,000 and when you die, they get the \$100,000 in life insurance proceeds instead of your estate.

Currently, viatical settlements are only legal if done by an insurance company. The provincial government has decided it wants to allow other people to get into the business. The draft regulation is a proposal about how such an industry should be regulated.

The proposal can be found at the FSCO's web site www.fcsco.gov.on.ca (click on "what's new"), or you can request a copy from us. Unfortunately (surprise surprise) the draft regulation does not contain many privacy protection measures. It also does not guarantee a minimum payout, so we could find ourselves with an industry where payouts of 10% of the face value of the policy is the norm. Worst of all, it says that viatical companies should be able to call you once every six months to check to see if you've died yet. You can find a copy of HALCO's response on our web site, or you can contact us and ask us for one.

OW and ODSP: Update on Drug and Literacy Testing

The government has been keeping its cards close to its chest about plans for the mandatory drug and literacy testing they intend to impose on social assistance recipients. To date, firm details are still not available.

In November, 2000, Minister of Community and Social Services John Baird announced that the government would be implementing mandatory drug and alcohol screening for social assistance recipients.

Through a number of press releases and some press coverage on this issue, we have been able to learn that plans are likely to include a

screening of recipients of social assistance to determine if they might have an addiction, and based on this screening, make referrals for more in-depth assessment. Included with plans to test for drug and alcohol dependency are recent announcements regarding mandatory literacy and numeracy testing. It is believed that applicants for social assistance will be screened to determine whether problems with reading, writing and basic math are a barrier for a person in finding work.

All information we have indicates that the screening or testing will be mandatory – if you refuse to participate, you will be refused assistance, or be cut off if you're already in receipt.

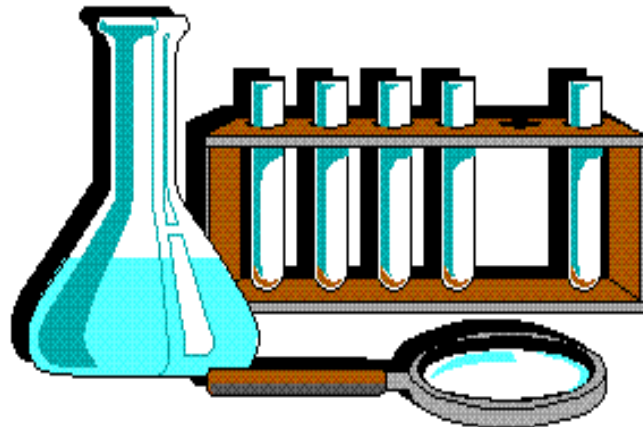
What's still not clear from the information we have to date is when these programs

will come into effect, and exactly who is affected by them. There is nothing saying that drug and alcohol screening will not be applied to ODSP recipients as well. In fact, in a public statement, the Minister indicated that in their goal "not to leave anyone behind", the government would not ignore ODSP recipients who might have addictions. We also have no concrete idea about what the regulations regarding this screening will say. Regulations can be passed in

cabinet and do not need to be publicly debated before passage.

The latest information seems to indicate that pilot programs for the mandatory literacy testing will

begin in October. Locations have not yet been announced. Again, while it is clear that the literacy testing will be applied to OW recipients and applicants we don't know yet whether there are any plans to use this same screening with people on ODSP, or applying for, ODSP. Information regarding drug and alcohol testing is even more scarce. Some government information indicates that they will begin to pilot test the screening early in the New Year, and some indications have pointed to October, in line with the literacy testing.



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CPP-D Changes - "Allowable Earnings"

The long-standing rule for people receiving Canada Pension Plan Disability benefits was that you had to report any return to work or change in circumstances when it occurred. That meant that if you made an attempt to work, you had to report it. Once you returned to work, your benefits would continue for 3 months. At the end of three months, your file would be reviewed and if you were still working, then your file would be terminated.

Well, as of May 1, 2001, this will change. Under a new policy, CPP has introduced what it calls the "Allowable Earnings Initiative". Under this new initiative, someone receiving CPP-D will not have to report a return to work or any income they receive from work until they've earned a certain amount of money. The new initiative creates a new term: Allowable Earnings. Allowable Earnings are your total earnings from all work in a calendar year which are equal to, or less than the Disability Basic Exemption (DBE) amount. **The DBE changes every year**, and is calculated as 10% of the Year's Maximum Pensionable Earnings (YMPE) for that year. For 2001, the DBE is \$3,800. Basically what has changed is that you don't need to report work or earnings until you've earned the DBE amount, unless you know that you will earn more than the DBE amount in a calendar year. Until you reach the DBE amount, you won't be reassessed on earnings from employment alone.

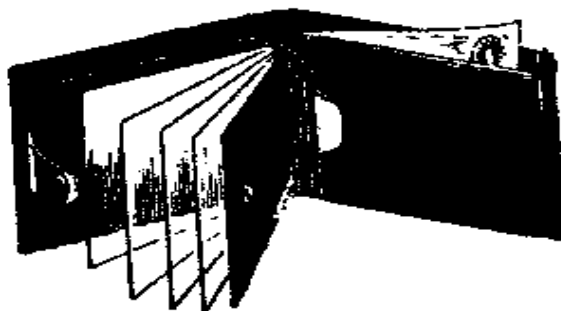
What counts as earnings?

In regular employment (you work for

someone else) earnings are calculated using your total wages, (**excluding** vacation pay, wages in lieu of notice and all money paid on termination) for all jobs in the calendar year. If you are self-employed (you own or operate a business either yourself or with others, or you work on contract for service), you must report based on your **gross** earnings. In either case, you are required to report the work and the earnings as soon as you have earned the DBE amount, or \$3800 for 2001.

What happens after I report?

When you do report the earnings, CPP will then follow-up on your case peri-



odically in order to decide when or if the three-month work trial should begin to be counted. They will also make a decision about whether the work that you are doing amounts to a Substantially Gainful Occupation (SGO). If your work brings in earnings over the DBE amount, and CPP decides that your work is a substantially gainful occupation, then your benefits will stop after the three month trial period ends. The three month trial period will start running in the month after the month that CPP decides you have a regular capacity to work at a substantially gainful occupation. CPP decides on whether or

not a job is substantially gainful based on productivity, performance and profitability. Generally, profitability is measured based on what is called a Substantially Gainful Occupation benchmark. For 2001, the SGO benchmark is approximately \$800 per month.

For example, you decide to try working, and you start at a job. You earn about \$475 a month at this job. You're not sure whether you'll be able to keep at it. After eight months, you have reached the Allowable Earnings threshold. At this time, you are required to inform CPP of the work you have been doing and that you have earned the Allowable Earnings threshold. CPP will then review your file, looking at the work and earnings to see if you are working at a substantially gainful occupation, based on profitability, productivity and performance. According to the new policy, it is up to the CPP to prove that you are working regularly, productively and profitably.

The new policy only means that you won't be reassessed solely on the basis of earnings unless you've reached the Allowable Earnings threshold. You can still be reassessed based on factors like a pre-scheduled reassessment date, or third party complaints. The policy is also clear that the new Allowable Earnings initiative does not change the current investigation practices of clients who appear to have misrepresented their work and income.

Locked in Pension Funds - Locked in no more?

Some people have RRSPs, retirement accounts or pension funds that are "locked-in". Usually this occurs when someone leaves a job at which they participated in a pension plan. At the end of employment, you can choose to transfer the value of your pension benefits into a locked in account. "Locked-in" means that you cannot liquidate the fund or account, or make any withdrawals from it until you reach the age of at least 55. This "locked-in" aspect makes them different from regular RRSPs, which can be accessed by cashing out and paying the tax on them.

Under changes to regulations made under the Pension Benefits Act which came into effect on May 1, 2000, some people might now be able to get money out of their locked-in benefits under certain circumstances, including specific kinds of financial hardship and shortened life expectancy (two years or less). Of particular interest to PHAs will be some of the kinds of financial hardship and the shortened life expectancy requirements.

What kinds of Financial Hardship qualify?

You can apply to access money from your locked in funds on your own behalf or for your spouse or same sex partner or a dependent. **Spouse** means **opposite sex** couple who are married, or who are not married but have lived together in a conjugal relationship for at least 3 years, or in a conjugal relationship of some permanence if together you are the parents of a natural or legally adopted child. **Same sex partners** means a **same sex** couple who have lived together in a conjugal relationship for at least three years or in a conjugal relationship of some permanence if they are the parents of a natural or legally adopted child.

There are six categories of financial hardship which might make you eligible to access money from locked-in funds or accounts:

- If you are **low income**, and your expected personal income before taxes for the next year must be less than \$25,533.33 for the year 2001. This amount changes every year.
- If you **face eviction from your home**, you might qualify under the financial hardship requirements. In this category, you must have received a written demand from a creditor for money owed on a debt which is secured against your residence (mortgage, property lien or property taxes). You will have to prove that you need money in order to avoid a risk of eviction.
- If you **face a risk of eviction from your rented residence**, you can apply to have money released from your locked-in fund. In this case you have to prove that you have received a written demand from your landlord for payment of money that you owe. This would also apply if it was your spouse or same sex partner who got the demand.
- Fourth, if you **need money to pay first and last months' rent**.
- Fifth, if you **need money to pay for medical treatment for you, your spouse or same sex partner or any dependents of either of you**. You will have to show that the expenses are not covered under OHIP, your private insurance or any other source. You'll need a doctor's letter showing that the treatment is necessary.

Finally, you can access money from locked-in sources if you **need money for residential renovations, alterations or construction to accommodate a wheelchair or other purposes related to a disability or illness**. The disability might be one that affects you, your spouse or same sex partner, or any of your dependents. You will also have to provide a doctor's letter showing the need for the expense.

You can also apply to get some or all of the money from a locked-in fund if you can prove that you have an illness or physical disability that is likely to shorten your life expectancy to less than two years. You will have to provide medical support from your physician verifying your reduced life expectancy.

How do I apply?

Where and how you apply depends on what category you are applying under. If you are applying based on **financial hardship**, you have to apply to the Financial Services Commission of Ontario, Financial Hardship Unlocking Section. You can contact them at 416-226-7889 or 1-800-668-0128. They have a TTY-toll free line at 1-800-387-0584. When you make an application under the financial hardship rules, you'll also have to establish that you don't have any other assets (and those of a spouse you are living with, or same sex partner). You have to show that even after the amount of your own assets is deducted from the amount you want to withdraw from the fund, you still need to withdraw at least \$500 from your fund. Some assets do not have to be counted:

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your principal residence, a personal business worth less than \$50,000; cars; tools of trade for employment and personal items like clothing and jewelry.

If you are applying for unlocking based on **shortened life expectancy**, then you should apply directly through the bank, insurance company or financial institution that administers your fund. They'll give you an application form and more information.

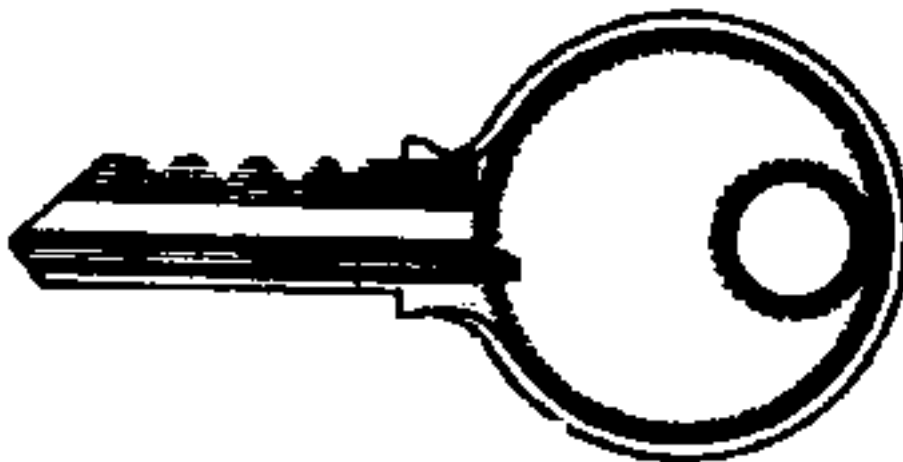
If you have a spouse or same sex partner who has an interest in your locked in fund, you will need to get their consent in writing to access the fund before you application can be processed.

What happens if I'm on social assistance?

When you went on to social assistance, you might have had to prove that an RRSP that you held was locked-in before you could qualify for assistance. As a general

rule, locked-in pension funds are not considered assets for the purposes of ODSP. However, the other general rule of social assistance is that unless specifically exempted, any money that comes your way is income and must be reported.

If you apply under these rules to withdraw



money from a locked-in fund, you will have to report it. Some money, however, will not affect your eligibility for assistance. For example, if you are withdrawing money for financial hardship reasons, and you are doing so for first and last months' rent, you are protected by the fact that loans for first and last month's rent are exempt as income under the ODSP regulations. In general, however, ODSP will consider these funds as income in the

month you receive them and assets thereafter.

If you have any questions about how these funds might affect your eligibility for social assistance, call us at HALCO.

What will it cost?

You will have to pay an 'administrative fee' in order to access your locked-in funds through these rules. The fee is 1% of the amount you are seeking to withdraw. In addition, you will have to pay any deferred tax on amounts that are withdrawn from these funds. Finally, it is important to note that any money that is cashed out of a locked-in plan is no longer creditor proof. This means that

it can be seized by creditors if you owe money.

Where can I get more information?

Call HALCO, or contact the Financial Service Commission of Ontario at the numbers provided above. You can also access all of this information, as well as application forms through their website at www.fSCO.on.ca.

HIV & AIDS Legal Clinic (Ontario) Donation Form

Yes! I want to make a charitable donation to help HALCO continue helping low-income PHAs in Ontario.
 Please accept my donation of: \$25 \$50 \$100 Other \$ _____

Please charge my VISA or AMEX: Card # _____ Expiry Date _____
 Name on card: _____ Signature _____

I enclose cheque/money order payable to the HIV & AIDS Legal Clinic (Ontario).

Please invoice me.

Name _____

Address _____ Postal Code _____

Phone (day) _____ Phone (evening) _____

Fax _____ Email _____

The HIV & AIDS LEGAL CLINIC (ONTARIO) is a registered charity. Our Charitable Registration Number is 891026957 RR0001.

You Asked Us

Q: I'm on ODSP. Lately, I've been thinking about trying to set up my own business and start doing some work. Can I do this and still receive ODSP?

A: Yes. Just like someone is allowed to work and receive ODSP, you can operate a business as well (be self-employed). Of course, you are still required to report all your earnings to ODSP, and there will be deductions against your ODSP entitlement based on your earnings. If you earn too much money, you may no longer be financially eligible for ODSP.

Under ODSP, people who operate or have an interest in a business can be required to provide an annual report regarding business income and assets. The plan must be approved by a worker.

Under the ODSP regulations, assets for the operation of a business are exempt up to a value of \$20,000. Tools of the trade that are essential to the employment of a member of the benefit unit are also exempt as assets. Income from your business is treated as earnings. This means that you report your earnings, and ODSP makes a calculation based on the Steps To Employment Program (STEP). The STEP rules allow the first \$160 you earn not to affect your entitlement. Seventy-five percent of everything you earn over the first 160 will be deducted from your monthly cheque on a dollar for dollar basis. The earnings you report should be your **net** earnings (i.e. after all deductions for income tax, Canada Pension Plan, employment insurance, union dues or pension contributions have been made).

ODSP also has a special policy for those operating a business. The rules with respect to business are in fact quite complicated, so it's best to look at the policy and consult before going ahead with the establishment of your business. In addition, the Employment Supports Program, which also

falls under ODSP, might be able to provide you with funding to help you create your business plan. Last but not least, the ODSP regulations allow an exemption under the income rules for that portion of a loan which is approved by the Director which is applied or will be applied to the operation of a business.

You can find the ODSP policy on businesses (called "self-employment income") online at <http://www.gov.on.ca/CSS/page/brochure/odspis/0302-04.pdf>. If you want to inquire about assistance in accessing Employment Supports and about returning to work in general before talking to ODSP, you can also contact the Employment ACTION Program at 416-345-8250.



2001 HALCO AGM

The HALCO Annual General Meeting will be held on **Monday, September 17 at the HALCO offices, 65 Wellesley St. E., Suite 400 from 7-9 p.m.** All members are encouraged to attend. In order to vote, members must have a valid membership for at least 30 days prior to the AGM. HALCO memberships are free, and valid for one (1) year. Individuals whose memberships need to be renewed will have received a new form in the mail. Please return the form to the office as soon as possible. Any individuals wishing to stand for election to the clinic's Board of Directors are encouraged to contact Matthew Perry at 340-7790/1-888-705-8889 as soon as possible.

Changes...

In our last newsletter we announced some upcoming staffing changes. We have now completed our hiring and are operating at full staff. The last few months have been busy here at HALCO and there are some new faces.

In April, our new part-time support staff person, Robert Harvey started working with us. Robert is here Tuesdays, Wednesdays and Thursdays. Many of you will know him from his friendly voice on the phone or from seeing him on the front desk.

In mid-June we welcomed staff lawyer Darrell Kloeze to HALCO. Darrell comes to us from the firm of Fasken Martineau Dumoulin in Toronto where he was an associate in the Litigation Department. Darrell brings to HALCO an expertise in litigation that we hope will help us address a wider range of issues affecting PHAs in Ontario in areas like prison and insurance litigation. We are extremely pleased to have Darrell join us and look forward to the exciting work we have ahead of us.

At the end of June we said goodbye to Ryan Peck, our articling student for the 2000-01 articling year. We'll miss Ryan's valiant efforts to educate the rest of us in music and his skill and enthusiasm working with our clients. On a happy note, we are happy to welcome John Nelson as our articling student for the year 2001-02. John began working the first of July and comes to us with a wealth of incredibly varied experience. We look forward to his help and contributions over the next year.

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