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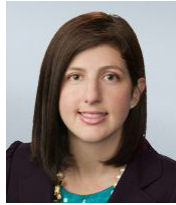
May 12, 2017



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## Medical Marijuana - Florida Legislative Update

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When Florida's regular legislative session came to a close on the evening of May 5, 2017, lawmakers had yet to reach a consensus on how to implement "Amendment 2" – the state's recently passed addition of Section 29 to Article X of the Florida Constitution providing expanded access to medical marijuana. As a result, physicians seeking to order medical marijuana for qualifying patients with debilitating conditions under Amendment 2 – as well as dispensing organizations, entrepreneurs, employers, their attorneys, and ultimately the patients – continue waiting for answers as to how the amendment will be put into practice. Out of eight bills filed in the House and the Senate aimed at effectuating the amendment, negotiations came down to House Bill 1397, filed by Representative Rodriguez, and Senate Bill 406, filed by Senator Bradley. Leading up to Friday, lawmakers appeared confident that a compromise would be reached. However, by the close of the session, the House and the Senate were unable to agree on key issues related to taxes and a cap on the number of dispensaries.

Specifically, lawmakers in the Senate wanted to limit the number of dispensaries each operator could open to five locations plus one for every 75,000 patients in the state. The House bill originally provided no cap, however, during negotiations, the House approved a measure that would have limited the number of dispensaries to 100 per license holder. Also leading to the demise of the respective bills was a disagreement on tax treatment for medical marijuana. The Senate took issue with a provision added by the House providing a tax exemption on medical marijuana, even with the addition of a sunset provision. Even where there was agreement between the House and the Senate, however, House Bill 1397 and Senate Bill 406 did not go far enough for some Amendment 2 supporters, inviting constitutional challenges if either bill was signed into law. Both bills allowed vaping and edibles but banned "smoking" medical marijuana – a limitation not explicit in the amendment.

Attorney John Morgan, a driving force behind Amendment 2 and its predecessor initiative by the same name, was the first to call for a special session for lawmakers to attempt to reach an agreement. Since then, others, including Senate President, Joe Negron and House Speaker Richard Corcoran, have also expressed support for a special session on medical marijuana. Corcoran and Negron have the ability to agree to call a special session, and may do so if they believe the Senate and the House can find a middle ground. Alternatively, Governor Rick Scott can unilaterally call the Legislature into a special session, though his office has been silent on the issue.

Unless a special session is convened, it will be up to the Florida Department of Health ("FDOH") to implement Amendment 2 through regulations by July 3, 2017 – a deadline set by the Amendment. Despite publishing a placeholder regulation and holding five rule making meetings, the FDOH appeared to welcome the legislature taking the lead. During the five rule making meetings, potential patients, caregivers, and others tracking implementation of the amendment, expressed their discontent with the FDOH's sparse placeholder regulation, and questioned the department's willingness to establish rules representative of Amendment 2. Until the legislature and/or the FDOH act, physicians, dispensing organizations, attorneys, and patients are left with the difficult task of navigating the requirements of Amendment 2 alongside the current statutory and regulatory framework put in place prior to the amendment.

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