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Effects of Florida's New Medical Marijuana Framework on Patients, Physicians, and Entrepreneurs[i]

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During a special legislative session ending June 2, 2017, the Florida legislature passed Senate Bill 8-A ("SB 8-A"), authored by Senator Bradley, amending Florida's medical marijuana laws to reflect the 2016 passage of Section 29 to Article X of the Florida Constitution (commonly referred to as "Amendment 2"). This comes after Florida lawmakers failed to reach a consensus on how to implement the amendment during the regular legislative session, leaving physicians, dispensing organizations, entrepreneurs, employers, attorneys, and patients wondering how to reconcile the incongruent requirements of Amendment 2 with Florida's existing medical marijuana laws. Governor Rick Scott, to whom the bill was presented on June 19, 2017, has indicated that he plans to sign the bill into law. Notwithstanding these significant developments at the state level, recent statements by Attorney General Jeff Sessions serve as a sobering reminder that medical marijuana remains illegal under federal law despite the Federal Government's prior position on non-interference with state medical marijuana systems.[iii]

While portions of the bill's language will likely be challenged in court, passage of the bill provides the integral framework necessary for impacted persons and businesses to begin moving forward with the conduct permitted by Amendment 2. As set forth more fully below, the bill contains numerous provisions of significant interest to potential patients, Florida physicians ordering or interested in ordering medical marijuana for patients, and entrepreneurs. Although the bill delivers an overarching structure for a more strong and effective medical marijuana regulatory system in state, additional details remain to be determined by the Florida Department of Health ("FDOH"). The bill tasks the FDOH with drafting various regulations necessary for implementation of the forthcoming revised statutes, including but not limited to rules: regarding recommended daily dose amounts, for medical marijuana treatment center sanitization, regarding storage and handling of medical marijuana related waste, and setting forth permitted and prohibited shapes, forms, and ingredients for edible medical marijuana products.

Patients and Physicians

Like the statutes it amends, SB 8-A continues to prohibit administration of medical marijuana by smoking. However, the amended law now includes the ten qualifying conditions set forth in Amendment 2[iv] , and removes the 90-day waiting period required under the prior law. The revised statutes will harmonize terms from the state's prior medical marijuana laws with vocabulary found in Amendment 2, such as replacing use of the term "order" with "physician certification" for medical marijuana, and specifying the requirements for issuing and obtaining such certification. The bill also details information that qualified physicians are required to provide to patients (and parents or legal guardians of minor patients) to constitute adequate informed consent prior to issuing a physician certification. Qualified physicians will be able to issue physician certifications for three 70-day supply limits of marijuana, up from the prior 45-day supply limitation. According to language in the bill, the FDOH is required to quantify by rule a daily dose amount for each allowable form of medical marijuana to be dispensed by a medical marijuana treatment center, which will be used to calculate the 70-day supply. Qualified physicians will also be able to submit electronic requests for exceptions to the daily dose amount limits under certain circumstances.

Entrepreneurs

Pursuant to the new bill, the FDOH is required to issue "medical marijuana treatment center" licenses to any entity holding an active, unrestricted license to cultivate, process, transport, and dispense low-THC cannabis, medical cannabis, and cannabis delivery devices under the former laws, by July 1, 2017. Additionally, the FDOH is required to issue 10 more licenses to medical marijuana treatment center applicants by October 3, 2017, with special preference given to certain applicants who: applied under the former medical marijuana statute, own facilities used for canning/concentrating or otherwise processing citrus fruit, and/or are recognized class members of two ongoing class action lawsuits. Once patient registration in the medical marijuana use registry reaches 100,000, the FDOH is required to issue 4 more medical marijuana treatment center licenses within 6 months, and to do the same for each additional 100,000 active qualified patients added to the registry. Notably, license holders will be permitted to open up to 25 dispensaries across the state, which number may increase as more patients are added to the registry as described in the amended law. Additionally, the new bill permits license holders to buy and sell allotted dispensary numbers from other licensees. Thus, it is possible that some license holders will be able to open more than 25 dispensaries under a single license.

Like the prior law, the new bill provides instructions and minimum requirements for license applications and renewals, including requirements that each applicant: has been registered to do business in Florida for five consecutive years prior to submitting an application; has the necessary infrastructure, technology, and resources; and has the financial ability to operate as a medical marijuana treatment center. Licensed medical marijuana treatment centers will be required to cultivate, process, transport, and dispense medical marijuana for medical use, and may not contract for services directly related to the foregoing, except under certain limited circumstances described in the law. License holders may only transfer ownership of such a medical marijuana treatment center to individuals or entities who meet the requirements set forth in the bill.

Individuals and entities who directly or indirectly own, control, or hold power to vote 5 percent or more of the voting shares of a medical marijuana treatment center may not acquire direct or indirect ownership or control of any voting shares in any other medical marijuana treatment center. The new law also provides detailed requirements for the inspection and treatment of plants, medical marijuana packing, and regarding production of edible forms of medical marijuana.

We hope that you find this useful and informative. Please contact us if you have any questions about this, or any other matter.

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[i] Medical marijuana remains illegal under federal law even in states, such as Florida, that permit medical use of the drug under certain circumstances. This article is published for general information purposes only. It does not constitute legal advice and does not necessarily reflect the opinions of the firm or any of its attorneys or clients. The information contained herein may or may not be correct, complete or current at the time of reading. The content is not to be used or relied upon as a substitute for legal advice or opinions. No reader should act or refrain from acting on the basis of the content of this article without seeking appropriate legal advice. This article does not create or constitute an attorney-client relationship between the authors, Shumaker, Loop & Kendrick, LLP, and the reader.

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[iii] Notably, on June 12, 2017, a letter written by Attorney General Jeff Sessions to legislative leaders set forth a request to repeal the Rohrabacher-Farr Amendment. The amendment, which was temporarily extended for one year by the budget bill signed by President Trump on May 5, 2017, does not change the legal status of marijuana under federal law. However, the amendment does provide that no Department of Justice funds may be used to prohibit states, including Florida, from implementing state laws authorizing the use, distribution, possession, or cultivation of medical marijuana. As of the date of this article, however, there are no written responses to Sessions' letter, and the amendment remains in place.

[iv] The new law defines "qualifying medical condition" to include cancer, epilepsy, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, post-traumatic stress disorder, amyotrophic lateral sclerosis, Crohn's disease, Parkinson's disease, multiple sclerosis, medical conditions of the same kind or class as or comparable to any of the foregoing, a terminal condition diagnosed by a physician other than the qualified physician issuing the physician certification, and chronic non-malignant pain.