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Client Alert: Mary Jane's Endless Dance: Florida Issues Notice of Rule Changes for MMTCs

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Although Florida voters passed a constitutional amendment to expand Florida citizens' right to medical marijuana treatment in 2016, the state has yet to settle on a regulatory scheme for medical marijuana treatment centers ("MMTCs"). Since the constitutional amendment was passed, the state has faced numerous legal challenges to its laws and instituted various rule versions, including enacting [emergency rules](#) in December of 2019. In keeping with this general trend of flux, on April 13, 2020, the Florida Department of Health ("DOH") issued notices of rule changes for MMTC rules related to inspection procedures, background screening, and disciplinary actions.

The first notice of change applies to [Rule 64-4.202](#), which governs MMTC inspection procedures. The proposed changes clarify that MMTC inspections will assess the MMTC's compliance with [section 381.986, Florida Statutes](#), DOH's rules, and any provider-specific representations in the MMTC's application(s) on file with DOH, including any department-approved amendments or variances. The MMTC must allow DOH access to all areas and operations including, without limitation, areas where marijuana, records, or equipment is located, or where MMTC business is conducted. During an inspection, the MMTC must make its records accessible to DOH. However, the MMTC has 24 hours after the conclusion of the inspection to provide additional records to DOH at OMMULicenseOperation@flhealth.gov. If the inspection finds a violation, the MMTC has seven (7) calendar days within receipt of notice of a violation to provide a written corrective action plan meeting all program requirements, via email to DOH at OMMULicenseOperation@flhealth.gov.

The other notices of change apply to [Rule 64-4.208](#) and [Rule 64-4.210](#), which govern background screening requirements and disciplinary actions, respectively. Under the proposed changes to Rule 64-4.208, MMTCs must request and obtain written notice from DOH that an individual has successfully passed a required background screening before allowing any such individual to serve as an employee, owner, or manager of the MMTC. Any employee, owner, or manager whose fingerprints were submitted prior to August 22, 2018 must be rescreened in accordance with Rule 64-4.208's requirements within 90 days of the effective date of the rule, and must successfully pass the required background screening to continue serving as an employee,

owner, or manager of the MMTC. For their part, the changes to Rule 64-4.210, clarify that the intent of DOH's disciplinary guidelines is to establish broad and consistent disciplinary principles for MMTCs. The proposed changes specify that for violations of an ongoing and continuous nature, each day the violation continues constitutes its own distinct violation. If the MMTC's license is suspended, the proposed change eliminates the prohibition on the MMTC continuing its cultivation of medical marijuana during its suspension. However, the MMTC may not resume normal operations after a license suspension until the MMTC receives written notice from DOH authorizing the MMTC to do so.

In light of these proposed changes, members of the industry should review their personnel background checks, recordkeeping policies and procedures, and consult with their compliance officer or lawyers for a compliance review.

1 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 lawyers 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 a lawyer-client relationship between the authors, Shumaker, Loop & Kendrick, LLP, and the reader.

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