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New Jersey Dept. of Health Amends State Medical Marijuana Rules

SUMMARY

On May 13, 2019, the New Jersey Department of Health (NJDOH) announced amendments to the state's medical marijuana rules aimed at expanding access to the program, which implements New Jersey's Compassionate Use Medical Marijuana Act. Perhaps most significant among the adopted amendments is the creation of a separate permitting system for cultivation, manufacturing and dispensing marijuana for medical purposes. Previously, the program was vertically integrated, i.e. all three were packaged together under a single licensing process. This, coupled with the fact that the legislature did not take action on either the medical expansion bill or the adult use bill, fuels speculation that additional Requests for Applications (RFA) may be coming soon from the NJDOH.

The rule changes follow the NJDOH's recommended regulatory actions in response to Governor Phil Murphy's issuing [Executive Order No. 6](#), in which he ordered a 60-day review of all aspects of New Jersey's current program, "with a focus on ways to expand access to marijuana for medical purposes." In response to Executive Order No. 6, NJDOH released its [EO 6 Report](#) on March 23, 2018, which proposed significant changes to the existing medicinal program. In an effort to create greater patient access, the state immediately put into effect some of the recommended changes, including cutting registration and renewal fees and expanding qualifying conditions.

The proposed rules were initially released in May of last year and are available [here](#), along with the recent May 2019 amendments. Monday's announcement comes on the heels of the Department's Biennial Report issued on April 1, 2019, which emphasized the need for expansion of New Jersey's program. The report stated that New Jersey requires "90 medical dispensaries to serve our population," with 50 to 70 operational dispensaries to serve the growing patient population by the beginning of 2021. The Department concluded that high prices are likely artificially suppressing demand among qualified patients and therefore "[l]owering price must be an explicit goal for policymakers and the Department. The best way to lower prices is to expand supply, access and competition." The Department also noted that there "is a strong need for additional [Alternative Treatment Centers], even with 6 more in the permitting process. The absolute minimum number of cultivation sites needed to meet projected patient demand for medicinal marijuana in the future is 24, plus over 50 dispensary sites." There are currently 46,300 patients, 950 doctors and 1,850 caregivers participating in the program.

Below are the highlights from the new amendments, which are scheduled to take effect on May 20th. The rule codifies the following changes that are already in effect:

- Reducing the registration fee for qualifying patients and their caregivers from \$200 to \$100
- Adding seniors and military veterans to those eligible for the reduced registration fee of \$20
- Authorizing qualifying patients to designate up to two primary caregivers instead of just one
- Reflecting the addition of seven "debilitating medical conditions" including PTSD, by statutory enactment; and six new conditions (anxiety, chronic pain of visceral origin, chronic pain related to musculoskeletal disorders, migraines, Tourette syndrome, and Opioid Use Disorder)
- Allowing physicians to opt out of inclusion on a public list of participating physicians

- Elevating the Medicinal Marijuana Program to division status within the Department of Health
- Expanding the forms of medical marijuana available in New Jersey to include oil-based formulations, like vape cartridges

Additionally, the rule includes the following changes that will go into effect upon publication:

- Creating a separate permitting system for cultivation, manufacturing and dispensing marijuana for medical purposes, which would increase the available supply of, and patient access to, usable marijuana and allow for specialization in the market
- Streamlining the process to petition for the addition of "debilitating medical conditions" by removing the requirement that petitions first be referred to the Medicinal Marijuana Review Panel
- Emphasizing the advisory role of the Medicinal Marijuana Review Panel to include the provision of guidance and recommendations to the State Health Commissioner regarding the medical use of marijuana
- Removing the requirement of psychiatric evaluation as a condition of physician certification of minors as qualifying patients

The April 1st Biennial Report, combined with the rule amendments, certainly signals potential for a new round of RFAs and increased efforts to expand the state's medical marijuana program despite inaction on the medical expansion or adult use bills. If you have any questions regarding an issue raised in this alert, please contact the author or the attorney at the firm with whom you are regularly in contact.

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