

Budding Opportunities – Insuring Medical Marijuana Licensees In An Uncertain World

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SUMMARY

The medical marijuana industry took a big step forward on June 20, 2017 when Pennsylvania's Department of Health awarded [<http://bit.ly/2s0LBp8>] 12 grower/processor permits. Of the 457 total applicants, the Department plans to award the remaining permits by the end of June. But as the burgeoning industry begins to take shape in Pennsylvania, statements made by the Trump Administration and Pennsylvania Gov. Tom Wolf signal that a battle over the legality of the industry may be on the horizon.

Medical marijuana is one of the fastest growing markets in the United States. More than 25 states, including Pennsylvania, have comprehensive medical marijuana programs. Most of these state programs require that licensed medical marijuana growers and dispensaries carry certain insurance for their businesses. While this new market presents opportunities for insurance companies in Pennsylvania and other states with public medical marijuana programs, an uncertain legal landscape has forced many carriers to the sidelines. For example, in May 2015, Lloyd's of London announced it would no longer take on risk for U.S. marijuana-related businesses until the sale of medical marijuana is formally recognized by the federal government as legal.

The sale of medical marijuana creates a friction between federal and state laws. While several states have legalized marijuana-related enterprises in various forms, marijuana remains a Schedule 1 controlled substance under the federal Controlled Substance Act. Given this conflict, the focus has been on the enforcement priorities of the federal government related to the state sanctioned medical marijuana industry.

Until recently, the Trump Administration has provided mixed signals on the enforcement of federal laws concerning marijuana-related activities in states with legalized programs. However, in a May 1, 2017 letter to Congressional leaders (which was recently released to the public), Attorney General Sessions clarified the Trump Administration's stance on medical marijuana programs, signaling a clear shift in federal enforcement priorities from the Obama Administration. The letter related to a rider to the budget appropriations bill, which prevents the Department of Justice from using any of its funds to enforce federal prohibitions involving the use or cultivation of medical marijuana that are permitted under state law. This rider has appeared in each appropriations bill since 2014. In his letter, Attorney General Sessions opined that "[d]rug traffickers already cultivate and distribute marijuana inside the United States under the guise of state medical marijuana laws." Specifically, "[t]he individuals in these [marijuana] organizations often find a place for themselves within state regulatory systems."

Attorney General Sessions' letter triggered a strong response from Gov. Wolf. He wrote to Attorney General Sessions to inform the President's top law enforcement official that if he seeks to further dis-

rupt the state's ability to establish a legal way to deliver medical marijuana to its citizens, the Governor will ask Pennsylvania's Attorney General to pursue legal action to protect state sovereignty. This responsive letter makes clear that Gov. Wolf will vigorously pursue legal action against the federal government if Attorney General Sessions continues to pursue this federal shift of enforcement policy to go after medical marijuana suppliers in states that have legalized public programs.

While it is unclear whether the federal and state government will actually do battle over this issue, Gov. Wolf has sent a message to insurance companies and other stakeholders that he will vigorously protect Pennsylvania's industry from further federal interference in Pennsylvania's medical marijuana industry.

For more information on these developments, please contact the authors or the attorney at the firm with whom you are regularly in contact.

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