Ohio Cultivates Marijuana Dispensary Rules as White House Sends Smoke Signals of Approval

Mar 20, 2017

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Last week, Attorney General Jeff Sessions, one of marijuana's most vocal opponents, went as far as to call the 2013 Cole Memo – the Department of Justice guidance deprioritizing the enforcement of federal laws against states that legalized marijuana – "valid." The tea-leaves-reading seems positive for those interested in getting involved in Ohio's medical marijuana industry as the State continues to cultivate a tightly regulated program.

Most recently, Ohio released a new draft of the proposed rules governing dispensaries. The Ohio Board of Pharmacy (the "Board") received over 300 comments to its initial draft of the proposed rules resulting in changes from everything to advertising to home delivery.

Perhaps the most significant change was the increase in provisional dispensary licenses awarded from 40 to 60, signaling the Board's recognition of the greater need for patient access and demand. Furthermore, the Board may have put applicants at some ease by clarifying that it will return the $5,000 application fee if the Board grants permission to withdraw an application due to a change in federal, state, or local rules or regulations. The comments received also caused the Board to decrease the biennial fee to operate a dispensary from $80,000 to $70,000.

There was a personnel change as well. The initial draft rules called for dispensaries to hire a part-time clinical director who was either a physician, pharmacist, or mid-level practitioner with prescribing authority to oversee operations. This requirement proved too onerous and was removed entirely. In response to a Board survey, only a small number of eligible clinicians said they were both willing and had an employer who would allow them to serve as a dispensary's clinical director.

50% more commenters responded against allowing home delivery of medical marijuana so the Board's initial home delivery prohibition remains unchanged. The hours a dispensary can operate were increased from 7:00 a.m.-7:00 p.m. to 7:00 a.m.-9:00 p.m. Another important change was that dispensaries are now allowed to offer coupons as long as they are intended only to benefit indigent or veteran patients. Lastly, the Board added prohibitions on advertisements based on public comments – dispensaries are prohibited from advertising with slang terms, marijuana leaves, and clothing.

These changes are reflected in round two of the proposed dispensary rules and more changes are expected since public comments to this draft will be accepted until March 24, 2017. Interested parties should direct their comments to mmcprules@pharmacy.ohio.gov and csipubliccomments@governor.ohio.gov. Dispensary license applicants will need to continuously monitor these rules to ensure their applications are timely and prepared in a detailed fashion to be awarded a spot on the coveted ground floor of Ohio's medical marijuana industry.

Please contact a member of our Health Care Innovation Team for more information. You can also visit our Health Law Matters blog for more insight into legal issues impacting the health care industry.

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