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Medical Marijuana Takes Root in West Virginia

Senate Bill 386, the West Virginia Medical Cannabis Act (the “Act”) was signed into law by Governor Jim C. Justice on April 19, 2017, and [became effective on July 5, 2017](#). However, there is an extraordinary amount of regulatory ground work that must be put into place over the next two years to make the dispensing of medical marijuana a reality in West Virginia. Under the statute, patients meeting certain strict medical criteria and their designated caregivers can first obtain identification cards on July 1, 2019 which enables them to obtain medical marijuana from designated dispensaries. In the interim, the West Virginia Department of Health and Human Resources, Bureau for Public Health, (BPH) announced the [members of the West Virginia Medical Cannabis Advisory Board](#) on June 30, 2017.

During the transition, BPH and the Medical Cannabis Advisory Board will establish criteria and procedures for authorized growers, processors, dispensaries, registered physicians and identification cards for authorized patients and caregivers in a series of rules and regulations designed to regulate the dispensing of medical marijuana in West Virginia.

1. What forms of medical marijuana will be dispensed in West Virginia?

The West Virginia Medical Cannabis Act has authorized the dispensing of medical marijuana in pill form, oil, topical forms including gels and ointments, a form medically appropriate for vaporization or nebulization (currently excluding dry leaf or plant form unless adopted by rule), tinctures, liquids or dermal patches (“Medical Cannabis”).

2. Who will be authorized to purchase medical marijuana in West Virginia?

Only West Virginians with a serious medical condition will be eligible to receive medical marijuana. Patients must suffer from the following serious medical conditions to be eligible to receive medical marijuana: a) cancer b) positive status for human immunodeficiency virus or acquired immune deficiency syndrome c) amyotrophic lateral sclerosis d) Parkinson's disease e) multiple sclerosis f) damage to the nervous tissue of the spinal cord g) epilepsy h) neuropathies i) Huntington's disease j) Crohn's disease k) post-traumatic stress disorder l) intractable seizures m) sickle cell anemia n) severe chronic or intractable pain of neuropathic origin or other severe chronic or intractable pain or o) terminally ill patients.

3. When will the regulations for growers, processors, dispensaries, patients, caregivers and registered physicians be available?

The West Virginia Department of Health and Human Resources (DHHR) has indicated that applications for growers, processors and dispensaries are expected to become available during the first quarter of 2018. Prior to this time, legislative rules will need to be developed to flesh out specific requirements for growers, processors, and dispensaries, but the statute does have [basic core requirements for these regulated entities](#). Only registered physicians will be permitted to certify that a patient has a serious medical condition under the Act and will receive therapeutic benefits from medical marijuana use, and that the patient is in the registered physician's care, making the patient eligible to apply for a Medical Cannabis identification card. The West Virginia Board of Medicine and the West Virginia Board of Osteopathic Medicine will develop separate rules governing such authority.

Once the legislative rules for growers, processors, dispensaries and registered physicians are in place, together with the requirements for authorized users and their designated caregivers, identification cards will first be issued as of July 1, 2019. Assuming these program requirements are in place, the effective kick-off of medical marijuana usage in West Virginia will be July 1, 2019.

4. What is the process to obtain authorization for a patient to receive medical marijuana?

To participate in the Medical Cannabis Program, patients must: 1) register with the BPH 2) obtain physician certification that they suffer from one of the 15 serious medical conditions identified in the Act 3) apply for a Medical Cannabis identification card and submit the appropriate application fee and 4) obtain Medical Cannabis from an approved dispensary located in West Virginia that has a valid permit issued by the BPH.

5. Will patients under the age of 18 be eligible to obtain Medical Cannabis?

If properly authorized, patients under the age of 18 with a serious medical condition may obtain Medical Cannabis through a caregiver who may be a parent or legal guardian (or other individual approved by the BPH based upon a specific showing that no parent or legal guardian is otherwise appropriate or available). An authorized caregiver must undergo a criminal history background check and apply to the BPH for an identification card, making the caregiver eligible to receive Medical Cannabis at an authorized dispensary on behalf of the underage patient.

6. What are the requirements to become an approved grower or processor of Medical Cannabis in West Virginia?

The law has specified that only 10 growers and 10 processors will be permitted initially, and it is further specified that a grower or a processor may not be a dispensary. The application for obtaining authorization to grow or process Medical Cannabis will require detailed criteria which will be further clarified by regulations that are yet to be adopted. [General guidelines](#) for those planning to participate as growers or processors are available. An application for a permit to become an authorized grower or processor must include an initial application fee of \$5,000, which is non-refundable

and a permit fee of \$50,000, which is refundable if the permit is not granted. It is not immediately clear that the Act and the regulations to be implemented would prohibit a grower from also being a processor under these requirements, and if so, whether there will be a separate \$55,000 application fee for each category.

7. What physicians will be eligible to participate in the Medical Cannabis Program?

In order to participate in the Medical Cannabis Program, a physician must be registered with the BPH, demonstrate sufficient training or expertise that the physician is qualified to treat the particular serious medical conditions, successfully complete a four-hour course established by the BPH, and hold a valid, unexpired, unrevoked, unsuspended West Virginia license to practice medicine in West Virginia.

8. Does the Medical Cannabis Program protect against federal prosecution for violations of controlled substance laws?

DHHR officially indicates in its guidance that the Medical Cannabis Program will not protect against federal prosecution, and that the U.S. Department of Justice has the authority to enforce the federal, civil and criminal laws regarding marijuana possession and use, regardless of state laws. However, the DHHR indicates that under current DOJ guidance, it is unlikely that prosecutions against growers, processors, dispensaries, physicians, patients or caregivers are will be expected if they are acting pursuant to the Act, based upon [a memorandum issued by the DOJ dated August 29, 2013](#). Given [statements by United States Attorney General Jeff Session](#), and [a memo recently issued](#), the DOJ may take a more severe look at current programs in other states which involve both the medical use of marijuana and the recreational use of marijuana, so caution should be exercised in developing these programs.

If you require further information regarding the West Virginia Medical Cannabis Act, please do not hesitate to contact Charles Johnson at: cmjohnson@fbtlaw.com or Brian Higgins at:

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**This does not constitute legal advice. Please note that marijuana is still illegal at the federal level and those participating in West Virginia's medical marijuana industry may be subject to federal prosecution.*

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