Medical Marijuana Law in Massachusetts

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Referendum Question Recap

- Approved 63%-37% in November 2012
- Only 2 municipalities voted no (Mendon and Lawrence)
- Technically in effect as of January 1
  (MDs can now issue “written certifications” to “qualifying patients” who will also receive a “limited cultivation registration” until dispensaries open)
- In the first year, the state can approve 35 not-for-profit dispensaries, at least 1 per county and not more than 5 per county
Referendum Question Recap

• Reminder #1: This whole process exists in Massachusetts and over a dozen other states because the federal government has not approved medical marijuana for pharmaceutical use.

• Reminder #2: Marijuana existed in Massachusetts before the referendum question.

• Reminder #3: The campaign is over.
DPH Responsibilities

1) Define “presumptive 60-day supply”
   - General Recommendation: 10 ounces ($4000!)

2) Register “Medical Marijuana Treatment Center” [dispensaries]

3) Register “Medical Treatment Center Dispensary Agents” [dispensary staff]

4) Register “Qualifying Patients” [users]

5) Register “Hardship Cultivation”
DPH Projected Timeline:

- March 29: regulation draft released.
- April 10: present regulation draft to state’s Public Health Council.
- April 19: three public hearings
  - (Plymouth, Boston and Northampton).
- April 20: end of public comment.
- May 24: projected effective date.
Limits of the State Law

- No requirement for health insurance reimbursement.
- MDs not mandated to approve patient use.
- Does not affect non-medical marijuana use/possession/growing laws.
- No requirement of accommodation for on-site marijuana use.
- No federal law immunity.
- Cannot operate under the influence.
Local Options - Dispensaries

**BAN**

- The Massachusetts Attorney General disapproved Wakefield’s town meeting-approved bylaw banning dispensaries.
  - Conflicts with the state law.

- Cities do not require the same AG approval for city ordinances, however same legal argument would apply to cities.
Local Options - Dispensaries

MORATORIUM

• The Massachusetts Attorney General approved Burlington’s town meeting-approved bylaw that imposes a temporary moratorium on dispensaries until June 30, 2014 as it is “limited in time period and scope”
  ◦ Therefore it does not “conflict” with the state law.
Local Options – Dispensaries

ZONING

Control dispensaries in regards to:

- Location (existing zone or overlay zone).
  - Similar to adult-only entertainment zones.
- Establishment size/frontage.
- Parking minimums/maximums.
- Distance from schools/parks/residences.
- Signage.
Local Options - Dispensaries

“SALES” ORDINANCE OR BYLAW

- Mimic tobacco regulations to:
  - Issue local operation licenses after meeting certain conditions and paying annual fee (i.e., same fee as liquor store license fee).
  - Banning vending machines, roll-your-own, self-service displays, free samples, coupons.
  - Require signage.
  - Provide penalty scheme including suspension.
  - No food service/tobacco/liquor/lottery
  - Determine hours of operation.
  - Control on-premises consumption.
Local Options - Dispensaries

BOARD OF HEALTH PERMITS

- Permits the sale of “food, tinctures, aerosols, oils or ointments.”
- BOH will probably not need to issue retail food service permits as regulation deems “food” as not a food or a drug.
- Most likely will not be able to prohibit food products.
- Don’t forget what the AG told Wakefield!
State Law - Usage

- Mass. Smoke-Free Workplace Law (MGL Ch. 270 §22) defines “smoking” as the “lighting of a cigar, cigarette, pipe, or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco

  OR

  NON-TOBACCO PRODUCT DESIGNED TO BE COMBUSTED AND INHALED.

- Does not include other means of usage.
State Law - Usage

- **Smoking** marijuana is banned...

1) in workplaces and public places as defined in state law.
2) anywhere a local regulation bans smoking IF the “smoking” definition matches the state law definition.
3) in smoke-free public housing IF marijuana is specifically mentioned or the “smoking” definition matches the state law definition.
Local Options - Usage

- The State’s Smoke-free Workplace law is anti-preemptive and municipalities have banned smoking in:
  - Outdoor Dining Areas
  - Parks
  - Playgrounds
  - Non-School Playing Fields
  - Town-Sponsored Events
  - Beaches
  - Cemeteries
THE DRAFT REGULATIONS

- 105 CMR 725.000
- On DPH’s website
- 45 pages long!
SCOPE

1) THE CONSUMERS: Register certifying physicians, registered qualifying patients, personal caregivers and hardship cultivation

2) THE RETAILERS: Register MMTCs (Medical Marijuana Treatment Centers) and dispensary agents

3) Ensure that qualifying physicians properly certify that a person has a debilitating medical condition
DEFINITIONS

• 1) Bona Fide Physician-Patient Relationship
• 2) Certifying Physician (Mass. Licensed)
• 3) Marijuana-Infused Product (MIP)
• 4) Life-Limiting Illness (prognosis-6 mos)
• 5) MMTC: Medical Marijuana Treatment Center
• 6) Verified financial hardship (MassHealth OR SSI OR income <133% fed poverty)
Registration of Certifying MDs

- Currently: any MD
- Before 1/1/14: must have both an active Mass. License and a Mass. Controlled Substance Registration.
- After 1/1/14: above requirements and completion of approved certification of professional development credits regarding marijuana use and substance abuse
Certifying Physician:

- Must utilize the Mass. Prescription Monitoring Program
- Must indicate time period between 15 days to 1 year on certification
- Must cap 60 day supply at 10 ounces
- Can’t have relationship with MMTC
- Can’t offer discounts
- Can’t give certification to self or MMTC employee
Registration of “Qualifying Patient”

- Card good for five years
- Patient picks one MMTC
  - Can change once in a 120-day period
- Current holders must reapply by 2014
Adult (18+) Patient Registration Requires:

- Bio information including DoB (from a “verifiable ID document”)
- Primary Residence in Massachusetts
- Bio information of their MD
- Bio information of any caregiver
- Registration fee
- Attest they won’t “engage in diversion”
Minor (under 18) Patient Registration Requires:

- All of the above AND
- Written permission from a parent or legal guardian
- MUST designate a personal caregiver who is either a parent or a legal guardian
- Has “life-limiting illness”
  - Debilitating medical condition
  - Not responding to curative treatments
  - “Where reasonable estimates of prognosis suggest death may occur within six months”
Personal Caregiver Registration Requires:

- Bio information including DoB (from a “verifiable ID document”)
- Qualifying Patient’s name
- Statement that they will be cultivating marijuana for X patient at X address
- Attest to limits of being a personal caregiver
- Attest they will not “engage in diversion” or use for themselves
Personal Caregiver Registration

Requires:

- Current holders must reapply by 2014
- Can only serve one patient unless:
  - Parent, guardian, hospice worker, nursing facility, medical facility
- A patient can have 2 personal caregivers
  - But only one can cultivate
- Card good for five years
- Can transport, obtain, cultivate (with permission), prepare, administer product for their patient
Dispensary Agent Registration

Requires:

- Be at least 21
- No felony conviction for drug offense
- Provide bio information
- MMTC responsible to conduct CORI check
- MMTC reports to DPH if employee leaves
- Card good for one year
Hardship Cultivation Registration Requires:

- Regulation aims to minimize issuance
- Patient cardholder must demonstrate access to a MMTC is limited because:
  1. verifiable financial hardship
  2. physical incapacity AND MMTC won’t deliver AND caregiver doesn’t exist or they can’t get to MMTC
  3. OR MMTC not within a reasonable distance of residence AND no delivery
Hardship Cultivation Registration

Requires:

- To obtain:
  - Must pay fee;
  - Identify one location for cultivation
  - Identify how cultivation will occur
  - Security plan
  - Growing can’t be visible from street

- If issued, good for one year
- Can’t sell, barter or donate product
- Agree to possible DPH inspection of cultivation site
MMTC Registration Requires:

- One entity cannot own more than 3 MMTCs (similar to Mass. liquor law)
- Mass. Non-profit incorporation
- Must sell vaporizers
- Must grow at retail site OR 1 other
- Must be CORI organizer user
- All officers/executives/BoD must be registered dispensary agents
MMTC: 2 PHASE APPLICATION:

- PHASE I: Applicant provides:
  - 1. Documentation they are Mass. Non-profit
  - 2. Have at least $500K in escrow account
  - 3. All business partners free from drug felony
  - 4. Any legal or enforcement actions in other states
  - 5. Ability to pay Phase II registration fee
  - 6. Applicable fee
  - 7. Proposed location description
MMTC: 2 PHASE APPLICATION:

- PHASE II: Applicant provides:
  - 1. Non-refundable application fee
  - 2. Detailed corporate information
  - 3. Address & Proof of viable location
  - 4. ADA compliance
  - 5. CORI checks, resumes, bios for all
  - 6. “Evidence of compliance with local codes, ordinances and bylaws for the physical address of the MMTC and for the physical address of the additional location, if any, including any demonstration of support or non-opposition furnished by the local municipality”
Also….

- 7. Liability Insurance
- 8. Detailed Floor Plan
- 9. Business Plan
- 10. Operational Plan for Cultivation
- 11. Procedure for Making MIPs
- 12. Transportation of Product
- 13. Patient Registration Procedure
- 14. Projected Service Area (Translation)
- 15. Dispensary Agent Training Plan
MMTC: 2 PHASE APPLICATION:

- Additional Notes:

- Site visit by DPH may occur before approval;

- Page 17 of regulations has a list of possible reasons for denial
IF MMTC IS APPROVED:

- A registration certification will be issued and it CANNOT be assigned/transferred
- Certification must be posted conspicuously
- Must be operational within 120 days
- Annual Renewal required
- DPH must approve address or name change
- DPH must be notified of a manager change
MMTC must have operating procedures that include:

- Hours of operation
- Security and storage measures
- Crime prevention techniques
- List of strains to be cultivated
- Recordkeeping
- “Seed to sale” inventory controls/product tagging/tracking
- Quality control/testing for contaminants
- Staffing Plan and Job Descriptions
- Emergency Procedures
- Alcohol/smoke/drug-free workplace policies
- Plan for handling confidential information
- Patient education
- 2 price lists: market rate & for patients “with documented verifiable financial hardship”
MMTC must have cultivating procedures that include:

- Can grow for up to 3 commonly-owned locations
- Pesticide Ban
- Soil testing and safety
- Best practices to reduce contamination
- Procedure for disposing of failed product
MMTC and Product Handling

- DPH has procedures for preparing from plant to dried product
- MIP production – by MMTC only.
  - Must comply with sanitary code and food handling regulations
  - Solid and Liquid waste disposal according to state law
  - Sanitizing agents registered with US EPA
  - Adequate plumbing/sewage
  - Potable water
  - Toilet facilities
  - Storage of finished products
MMTC and Marijuana Labeling

- Packaged in opaque child-proof containers
- No cartoons/images other than MMTC logo
- Label to include: patient registration #, MMTC registration #, contact info, quantity of usable marijuana, date packaged, bar codes, cannabinoid profile, THC level, tests performed, DPH warning
MMTC and MIP Labeling

- Same as above PLUS
- The name of the product
- Quantity of usable marijuana contained within the product as measured in ounces
- List of ingredients
- Date of product creation, “use by” date
- Directions for use
- Warning of nuts and other known allergens
This product has not been analyzed or approved by the FDA. There is limited information on the side effects of using this product, and there may be associated health risks. Do not drive or operate machinery when under the influence of this product. KEEP THIS PRODUCT AWAY FROM CHILDREN.
MMTC MARKETING

- Logo fine but no images of marijuana or related paraphernalia
- External sign size limited to 16” x 18”
- No illumination
- No ads for marijuana or brand names
- No product displays visible from exterior
- No advertising marijuana prices other than price list at establishment
- No promotinal gifts, t-shirts, novelty items
Random Notes

- Consumption at MMTCs is prohibited
- MMTC can refuse to serve client
- Internet and mail orders prohibited
MMTC SECURITY REQUIREMENTS

- Must include, but are not limited to:
  - Entry restricted to patients, personal caregivers, dispensary agents
  - Outside vendors, contractors under certain conditions can obtain limited entry
  - Prevent loitering outside
  - Store all product in locked safe or vault
  - Adequate lighting of outside perimeter
  - Reduce means of people concealing outside
  - Dispose of all product if registration revoked
  - Security Alarm system according to regulation
  - Annual security system audit
MMTC PRODUCT TRANSPORT

- Only can be done by Dispensary Agents
- Weighing and inventory must take place before and at delivery time
- Shipping manifests required
- No additional stops during deliveries
- Minimum of 2 dispensary agents per delivery
- Must follow regulation’s requirements for home delivery
MMTC CONFIDENTIALITY

- Required for qualifying patients, personal caregivers and dispensary agents, exempt from state’s public records law
- Some info can be released to DPH upon request
- MMTC applications/information is not confidential
MMTC INSPECTIONS

- Agree to DPH inspection at any time
- Inspection will include
  - Testing marijuana and MIPs
  - Dispensary agents and their activities
  - All records
MUNICIPALITIES

- As per the regulation:

- A MMTC and other registered persons shall comply with all local rules, regulations, ordinances and bylaws.

- The Department does not mandate any involvement by municipalities or local boards of health in the regulation of MMTCs, qualifying patients with hardship cultivation registrations, or any other aspects of medical marijuana. However, nothing in 105 CMR 725.000 [this regulation] shall be construed so as to prohibit appropriate, lawful local oversight and regulation, including fee requirements, that does not conflict or interfere with the operation of 105 CMR 725.000.
Shameless Plug

- Over 400,000 Americans still die from tobacco-related illnesses annually (many more than from marijuana!)

- We are happy to help you update your local tobacco measures with state-of-the-art policies.

- Give us a call!