

Memorandum

VIA E-MAIL

TO: New Jersey Academy of Ophthalmology Members
FROM: Debra C. Lienhardt, Esq.
DATE: October 21, 2010
SUBJECT: Proposed Regulations - New Jersey Compassionate Use Medical Marijuana Act

Pursuant to your request, set forth below is a summary of the New Jersey Compassionate Use Medical Marijuana Act's ("Act") key provisions and the recently proposed rules.

Compassionate Use Medical Marijuana Act

On January 18, 2010, Governor Jon S. Corzine signed the Act into law, making New Jersey the 14th state to authorize the use of marijuana for medicinal purposes. The other states are Alaska, California, Colorado, Hawaii, Maine, Michigan, Montana, Nevada, New Mexico, Oregon, Rhode Island, Vermont and Washington.

In enacting the Act, the Legislature stated:

Compassion dictates that a distinction be made between medical and non-medical uses of marijuana. Hence, the purpose of this act is to protect from arrest, prosecution, property forfeiture, and criminal and other penalties, those patients who use marijuana to alleviate suffering from debilitating medical conditions, as well as their physicians, primary caregivers and those who are authorized to produce marijuana for medical purposes.

Not all medical conditions qualify for treatment by marijuana. Dispensing is authorized only for specifically delineated conditions, termed "debilitating medical conditions." The Act defines a "Debilitating Medical Condition" as:

- one of the following conditions, if resistant to conventional medical therapy: seizure disorder, including epilepsy, intractable skeletal muscular spasticity, or glaucoma;
- one of the following conditions, if severe or chronic pain, severe nausea or vomiting, cachexia, or wasting syndrome results from the condition or treatment thereof: positive status for human immunodeficiency virus, acquired immune deficiency syndrome, or cancer;
- amyotrophic lateral sclerosis, multiple sclerosis, terminal cancer, muscular dystrophy, or inflammatory bowel disease, including Crohn's disease;
- terminal illness, if the physician has determined a prognosis of less than twelve months of life; or
- any other medical condition or its treatment that is approved by the Department of Health and Senior Services ("Department") by regulation.

The Act authorizes the establishment of "alternative treatment centers" which would be authorized to perform necessary activities to provide qualifying patients with marijuana and related paraphernalia. According to the Act, the Department will accept applications to operate the alternative treatment centers and will be required to ensure that there are at least two each in the northern, central and southern regions of the State. The first two centers in each region must be nonprofit entities. Subsequent centers may be nonprofit or for-profit entities.

The alternative treatment centers will be authorized to dispense up to two ounces of marijuana to a "qualified" patient or caregiver in a thirty-day period. If the physician's written instructions do not state an amount, the center may dispense two ounces at one time. A physician may issue multiple written instructions authorizing the patient to receive up to a ninety-day supply in total.

Patients who suffer from a Debilitating Medical Condition must also obtain a "registry identification card" from Department which will identify the patient as someone who is permitted to use marijuana for medical purposes.

Compassionate Use Medical Marijuana Act – Regulations

On October 6, 2010, the Department released its draft rules outlining the registration and application process for patients, primary caregivers, physicians, cultivators and dispensaries to participate in New Jersey's Medicinal Marijuana Program ("Rules").

Set forth below are some of the Rules' provisions:

- The definition of "bona-fide physician patient relationship" tracks the language of the Act – a relationship in which the physician has ongoing responsibility for the assessment, care and treatment of a patient's debilitating medical condition. However, the Rules further define the word "ongoing" as follows: (i) the physician-patient relationship has existed for at least one year; (ii) the physician has seen and/or assessed the patient on at least four visits for the patient's debilitating medical condition; or (iii) the physician assumes

responsibility for providing management and care of the patient's debilitating medical condition after conducting a comprehensive medical history and physical examination, including a personal review of the patient's medical record maintained by other treating physicians reflecting the patient's reaction and response to conventional medical therapies.

- Although the Act provides that the Department may add other medical conditions or treatments as debilitating medical conditions, the Rules prohibit the Commissioner of Health and Senior Services from taking any action to approve other debilitating medical conditions until at least two annual reports to the Governor and the Legislature are completed. The Rules also establish a lengthy process by which additional qualifying debilitating medical conditions can be added to the list. The process would involve publication of notice in the New Jersey Register of an open period to accept petitions to approve other medical conditions as debilitating medical conditions. The Rules provide that the Commissioner must appoint a review panel to review such petitions.
- Patients would have to pay \$200.00 to apply for the issuance or renewal of a registry identification card. If an applicant can demonstrate eligibility to receive services under the New Jersey Medicaid program, receipt of current food stamp benefits, Supplemental Security Income benefits or Social Security Disability benefits, then the fee to apply for a registry identification card is \$20.00. Registry identification cards shall be valid for 2 years.
- Those seeking to be primary caregivers would also be required to pay \$200.00 to apply for the issuance or renewal of a primary caregiver identification card.
- Physicians that are registered with the Department are eligible to authorize the medical use of marijuana by a qualifying patient pursuant to a physician certification. The Rules provide that, in addition to other items, the certification must include the following statement:

I have completed a comprehensive history and physical on this patient and have documented an assessment and treatment plan. This patient has not responded to conventional medical treatment as defined by evidence-based algorithms of care and may benefit from the use of medicinal marijuana. I have provided education to the patient on the lack of scientific consensus for the use of medicinal marijuana, its sedative properties, and the risk of addiction. The patient has provided informed consent. I will continue to follow this patient at a minimum every three months and reassess the patient's debilitating medical condition and responses to treatment options.

- Alternative Treatment Centers would be required to collect and submit to the Department for each calendar year at least the following statistical data:

- Number of registered qualified patients and registered primary caregivers
 - Debilitating medical conditions of qualified patients
 - Number of registered qualified patients receiving residential home delivery
 - Patient demographic data
 - Program costs
 - Summary of patient surveys and evaluation of services
- While the Act calls for a minimum of six nonprofit centers to both grow and sell marijuana, the Rules modifies this only allow two. The Department's press release announcing the Rules states that "Six Alternative Treatment Centers (ATCs) will be selected through a competitive process. Two of the ATCs will be cultivators and four will be dispensaries. All of the ATCs will be nonprofit." The dispensaries could also each open one satellite office. The Rules also allow for certain residential deliveries when the qualifying patient is a child, due to age, medical condition or disability of the qualifying patient or primary caregiver, or if the qualifying patient and the primary caregiver are unable to travel to the patient's designated alternative treatment center-dispensary because they lack access to a personal vehicle or convenient public transportation or have limited mobility.
 - Levels of delta-9-tetrahydrocannabinol (THC) that medical marijuana may contain would be limited.
 - Those seeking to be alternative treatment centers must go through an application process and must submit \$20,000 in application fees (\$18,000 will be returned if the application is rejected). Annual renewal fees are also \$20,000.

On Monday, October 18, 2010 Senator Nick Scutari, one of the New Jersey Senators who sponsored the Act, introduced a Senate Concurrent Resolution on the basis that the Department's Rules set up too many roadblocks for people the Act was designed to help. The Resolution states that the Rules are not consistent with the intent of the Legislature as expressed in the language of the Act. If the resolution passes, the Department will have 30 days to withdraw the Rules or rewrite them.

Note that the foregoing discusses only a portion of the Rules and the Resolution. If you would like a copy of the Rules or the Resolution or if you have any questions, feel free to contact us at 973-228-5700. We will continue to monitor the status of the Rules and the Resolution and will keep you apprised.