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Cannabis Business Blog

Major Changes to Washington Medical Marijuana Law Impact Licensed Recreational Business and Create New Licensing Opportunities

By Jared Van Kirk on 4.29.15 | Posted in Washington

On Friday, Governor Jay Inslee signed Senate Bill 5052, reshaping Washington's medical marijuana law and largely merging commercial medical marijuana production and sale into the regulated I-502 recreational system. This law will have a significant impact on medical marijuana providers and patients. In this brief update, however, I will highlight some of the changes that will impact current participants in the recreational marijuana market or those who wish to join the merged recreational/medical system.

Retailers and Medical Endorsements

Under the new law, medical marijuana will be sold by licensed retailers who obtain a medical marijuana endorsement from the renamed Washington State Liquor and Cannabis Board (mercifully preserving the Board's useful acronym). Any retailer who acquires an endorsement must carry products that are identified by the Department of Health as beneficial to medical marijuana patients and comply with what will likely be a host of additional regulations adopted by the Department and the WSLCB.

By July 1, 2016, the law will bring to an end unregulated collective gardens. Although individual and collective growing by no more than four medical marijuana patients (or designated providers) for their own use will remain lawful (subject to WSLCB regulation), the retail sale of recreational and medical marijuana will be limited to licensed stores with medical endorsements. Current recreational retailers will need to assess the pros and cons of serving the medical marijuana market and begin to take steps to prepare for applying for a medical marijuana endorsement.

New Retail Licenses

Under regulations to be adopted, the WSLCB will reopen the licensing process for retail stores and issue new recreational licenses to meet the needs of the medical marijuana market. The law directs the WSLCB to increase the maximum number of retail outlets authorized to operate in each county to accommodate the needs of medical patients. Unlike the prior I-502 lottery,

however, this round of licensing will be merit-based and intended to identify retailers who have a demonstrated history of legal compliance, qualifications and experience in the marijuana industry, and familiarity with the needs of medical marijuana patients. The specific merit factors, timing, and licensing process will be determined by WSLCB regulation and interested applicants must take measures to stay abreast of this process and react quickly.

The WSLCB will give first priority to applicants who applied for a recreational retail license in the I-502 lottery (prior to July 1, 2014), who have operated or been employed by a medical marijuana collective before January 1, 2013, who have maintained appropriate business licenses, and who have a demonstrated history of paying applicable state taxes and fees. Second priority will be given to applicants who have operated or been employed by a medical marijuana collective before January 1, 2013, maintained business licenses, and paid state taxes and fees, but who did not previously apply for an I-502 license. This priority structure presents an opportunity for applicants who were unsuccessful in the I-502 licensing lottery, but have a tax and business licensing compliant history in the medical marijuana industry and are willing to incorporate medical marijuana into their retail business model.

Accordingly, participants in the medical marijuana market who did not maintain a business license or pay state taxes and fees may face a challenge in entering the new medical marijuana market structure and should take steps now to ensure compliance.

Producers and Processors

The law directs the WSLCB to reconsider the size of the total production canopy to address the need for production of medical marijuana within the regulated system. In addition, existing licensed producers may designate production space for the production of plants determined by the Department of Health to be appropriate for medical use. The LCB is directed to increase the production space allotted to those producers. If current producers do not claim the total increased production canopy, the WSLCB is empowered to reopen licensing for new producers who commit to grow plants destined for medical-endorsed retailers.

Regulations

One of the chief purposes of SB 5052 is to bring medical marijuana under the regulations already adopted by the WSLCB for the I-502 recreational system, including regulations requiring seed to sale tracking, testing and product safety, product packaging, retail store locations, and more. In general, retailers selling medical marijuana under a medical endorsement will need to comply with these WSLCB rules, and be prepared to address the rapid regulatory changes that have occurred in the past year and will likely continue to occur. In addition, the new law will establish additional areas of regulation that have not previously existed in the recreational system or that are specific to medical marijuana. For example, the law authorizes regulations to implement a new medical authorization database and define

retailers' responsibilities for inputting information and issuing recognition cards to patients. In addition, the Department of Health will adopt regulations addressing beneficial medical marijuana products, safe handling requirements, a new "medical marijuana consultant certificate," and requirements for employees of medical-endorsed retailers. Finally, the law authorizes the WSLCB to conduct controlled purchase programs to enforce the restrictions on sales to minors and authorizes licensed retailers to conduct their own in-house controlled purchase programs to monitor compliance by employees.

Warning Regarding Federal Law: The possession, distribution, and manufacturing of marijuana is illegal under federal law, regardless of state law which may, in some jurisdictions, decriminalize such activity under certain circumstances. Penalties for violating federal drug laws are very serious. For example, a conviction on a charge of conspiracy to sell drugs carries a mandatory minimum prison term of five years for a first offense and, depending on the quantity of marijuana involved, the fine for such a conviction could be as high as $10 million. In addition, the federal government may seize, and seek the civil forfeiture of, the real or personal property used to facilitate the sale of marijuana as well as the money or other proceeds from the sale. Although the U.S. Department of Justice (DOJ) recently rescinded its guidance regarding prioritization of criminal prosecutions of individuals and entities operating in compliance with effective state regulatory systems, DOJ left in place long standing guidance to federal prosecutors regarding how to exercise this discretion. Individuals and companies are cautioned to consult with experienced attorneys regarding their exposure to potential criminal prosecution before establishing business operations in reliance upon the passage of state laws which may decriminalize such activity. Federal authority to prosecute violations of federal law as crimes or through seizures and forfeiture actions is not diminished by state law. Indeed, due to the federal government's jurisdiction over interstate commerce, when businesses provide services to marijuana producers, processors or distributors located in multiple states, they potentially face a higher level of scrutiny from federal authorities than do their customers with local operations.