

Cannabis Business Blog

Medical Cannabis May Lose Protection in Upcoming Spending Bill

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All eyes in the medical cannabis industry are watching a December deadline faced by Congress. A short-term funding deal signed into law on September 8 by President Donald Trump not only kept the government running, it also preserved an existing provision known as the Rohrabacher-Blumenauer Amendment that prohibited the Department of Justice from interfering with state medical marijuana laws. That deal will expire on December 8, and Congress will have to approve a new version of the amendment if the protections are to remain in the next spending bill.

However, just as President Trump was preparing to sign the temporary extension, the House Rules Committee blocked the Rohrabacher-Blumenauer amendment from receiving new consideration by the full House. If this amendment is not included in the next spending bill, the protections it affords may expire just a few weeks before the New Year.

At the House Rules Committee meeting, the authors of the amendment, Reps. Dana Rohrabacher, R-California, and Earl Blumenauer, D-Oregon testified that medical cannabis protections are existing law and that public opinion is in favor of the existing medical cannabis regulations that already exist in 46 states. In a statement released after the House Rules Committee setback, Reps. Rohrabacher and Blumenauer stated:

“Committee leadership is putting at risk the millions of patients who rely on medical marijuana for treatment, as well as the clinics and businesses that support them. The American people ... overwhelmingly oppose federal interference with state marijuana laws. These critical protections are supported by a majority of our colleagues on both sides of the aisle.”

The two representatives also said, “as House and Senate leadership negotiate a long-term funding bill, we will fight to maintain current protections.”

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There is still another avenue for the amendment to survive. In July 2017, the Senate Commerce, Justice, Science (CJS) Appropriations Committee approved inclusion of the Rohrabacher-Farr Amendment (which is just another name for the Rohrabacher–Blumenauer amendment) in the Senate CJS Appropriations bill for fiscal year 2018.

With the Rohrabacher-Blumenauer Amendment set to expire on Dec. 8, the future of its protections now hinges on the work of the House-Senate conference committee, which will reconcile the differences between the spending bills of the two chambers this fall.

Given potential disputes over deferred action for childhood arrivals DACA, border wall funding and other issues, it is unclear whether the House and Senate conference committees will be able to save the Rohrabacher-Blumenauer Amendment. If it expires, thousands of medical cannabis users, growers and suppliers will be at risk of federal prosecution, as one of the main protections against such prosecutions will no longer exist.

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.

Tags: Department of Justice, medical cannabis industry, medical cannabis protections, medical marijuana, medical marijuana users, President Trump, Rohrabacher-Blumenauer Amendment, Rohrabacher-Farr Amendment, state marijuana laws, state medical marijuana laws