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EDITOR'S PICK

TOPICAL

The state's cannabis market is headed for big changes. What's next?

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There is a lot going on in the world of cannabis.

A lawsuit has put the opening of new dispensaries on hold.

The state has adopted regulations that will give medical operators a major leg up on smaller pot farmers and retailers.

And the Office of Cannabis Management, which has so far only granted conditional licenses to justice-involved businesspeople, is about to open cannabis license applications to everyone.

Meanwhile, the state has seen more than \$70 million in cannabis sales through late August. Licensed pot sellers and growers have also teamed up to sell their crops through the Cannabis Growers Showcase and are on pace for \$12.5 million in Showcase sales by the end of the year, the state said.

In comparison, Maine – a state with just 7% of the population of New York – generated \$140 million in cannabis sales through August through its recreational pot market that launched three years ago.

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With questions swirling, here are five things we know.

Is the OCM setting itself up for trouble – again?

At its Cannabis Control Board meeting on Sept. 12, the Office of Cannabis Management announced it will open general licensing applications for growers, retailers, distributors, microbusinesses and processors to the general public on Oct. 4.

But by law, the state is required to give a 30-day notice period.

“Doing my math, that is fewer than 30 days,” said Patrick Hines, a partner at law firm Hodgson Russ and co-leader of its hemp and medical cannabis practice.

That would mean, technically, general licensing applications should open Oct. 12. If they open earlier, the OCM risks another lawsuit.

“There’s plenty of people waiting in the wings to file lawsuits who haven’t been shy in the past,” Hines said. “Is this going to cause further delay?”

The fear is that “anybody who has any incentive to slow the program down” could file a lawsuit, leading to another injunction that would put licensing on hold, Hines said.

“People are concerned about that,” he said.

Will stores start popping up everywhere next month?

No. It will take several months. Once licensing opens to the general public in October, the application window will be open for 60 days. The state will begin reviewing applications after 30 days, Hines said.

But the race for real estate has been difficult, as landlords have been reluctant to lease space to dispensaries. The state has indicated it will give preference to applicants who already have real estate.

“If you’re a retailer and you already have control over a location that you’re planning to operate, then there’s a suggestion that you’ll get fast-tracked,” Hines said.

Of the 23 licensed adult-use shops in the state, the average time to get the doors open has been about four months from the time a retailer has received its license, the Office of Cannabis Management said.

Will all those illicit shops go legit?

While there are just about two dozen licensed recreational dispensaries open in the state, there are thousands of other unlicensed (or legacy) shops operating, many of them in Western New York.

Selling unregulated, untested, untaxed cannabis – usually at lower prices – unlicensed stores pose a major threat to the success of licensed shops, state officials have said.

“If you’re legacy, you’re not probably paying taxes the correct way,” said Aleece Burgio, an attorney at Colligan Law in Buffalo. “They’re buying product in the illicit market. They’re buying product across state lines, which isn’t allowed. So they can lower their prices and get bigger returns than people in the general.”

Gov. Kathy Hochul has given state regulators more tools to fine and shut down unlicensed shops.

“We are continuing to work closely with our local partners across the state to further expand our enforcement efforts while ensuring consumers have increased access to safer, tested products and that our cultivators and retailers can thrive in a fair, regulated and legal market,” said Jason Gough, a spokesperson for the governor’s office.

The state has seized thousands of pounds of unlicensed pot worth tens of millions of dollars from more than 125 unlicensed businesses across the state, but it has been a drop in the bucket.

“You hope the illicit decide to move into the general market. I think that would be ideal,” said Burgio. “Obviously, you’re hoping to get legacy to come over.”

But it’s not likely.

“In order for it to be attractive, there has to be that threat of being shut down,” Burgio said. “I don’t think it’s really enough of a threat right now for them to be motivated to go into the general.”

Will the CAURD injunction go away now?

The Marijuana Regulation and Taxation Act, signed into law in 2021, established licensing priority for social and economic equity applicants, which it defined as individuals “from communities disproportionately impacted by the enforcement of past prohibition, minority- and women-owned businesses, distressed farmers, and service-disabled veterans.”

But when the state opened up licensing applications, it created the Conditional Adult-Use Retail Dispensary license (or CAURD) – open to those affected by cannabis law enforcement only, and leaving out other social and economic equity applicants.

“The law was clear that you were supposed to open up retail to everybody all at once. Not a specific group,” Hines said.

So four military-veteran dispensary license applicants have filed a lawsuit, which has put the opening of any new CAURD cannabis dispensaries in New York State on hold.

There are 440 justice-involved individuals who have been granted CAURD licenses, but are now legally prevented from opening.

“So basically all of that is in limbo, but with the application period opening up on Oct. 4, that would seem to be moot because the entire lawsuit is premised on the idea that you can’t open it up to only some people first.”

Assembly Majority Leader Crystal Peoples-Stokes, who has spearheaded social equity in the state’s cannabis rollout, suggested that Registered Organizations – companies that cultivate and dispense medical cannabis – influenced the plaintiffs’ decision to file the lawsuit as a way to knock out competition from social equity applicants.

“If it was up to them, we would have legalized it, passed it on to them and they would have been on their merry way,” she said. “But it wasn’t up to them.”

Why are conditional growers so upset?

To say that the state’s conditional growers are not happy with the handling of the state’s rollout of legal pot sales is an understatement.

These growers have invested heavily to become pot farmers, only to harvest their crops and find that the licensed stores where they were promised they could sell their pot didn’t exist yet, and then were opening painfully slowly. Growers are now sitting on hundreds of millions of dollars in unsold pot – some reports say billions – with little opportunity to recoup their investment.

Last week, the Office of Cannabis Management logged its cannabis regulations. Now, as part of those regulations, established medical dispensaries will be able to grow and sell their own pot to the recreational market, under more favorable conditions than those granted to the conditional growers.

Conditional growers were originally told they would have three years’ head start before multistate operators would be allowed to enter the market. They got one year, and a dysfunctional one at that.

The well-heeled competition comes as conditional growers are struggling to survive. One Steuben County farmer said she had to sell her tractor just to feed her family.

“This ruined my life,” said Jeanette Miller, a cannabis grower in Newfane.

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