

Practice Update

White House Previews Federal Marijuana Policy

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Late last week, the White House provided the most significant insight since the inauguration as to how the Trump Administration will handle federal marijuana policy.

During an afternoon press briefing, White House press secretary Sean Spicer addressed the new administration's position on state laws legalizing marijuana and the conflict between these laws and federal law. Notably, Spicer quickly identified it as "two distinct issues": medical marijuana and recreational marijuana. Similar to the position taken by Donald Trump during the campaign, it appears that the administration will continue to allow states to develop and implement robust **medical** marijuana programs without unnecessary federal interference. Spicer noted that Congress over the last several sessions defunded the Department of Justice from interfering with state medical marijuana programs and their participants, and signaled that the Trump Administration has no present intent to enforce the federal Controlled Substances Act against individuals and entities operating in accordance with state medical marijuana legislation.

As to adult use, or as he referred to it, "recreational marijuana," Spicer revealed that he expects the states

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to see “greater enforcement” of federal prohibitions on marijuana. In contrast to the largely hands-off policy implemented under the Obama Administration’s Cole Memo, Spicer’s comments appeared to signal that the Trump Administration will not facilitate or sanction the growth of non-medical production, sale and use of marijuana, notwithstanding state laws to the contrary. What “greater enforcement” means for state licensed adult use businesses is presently unknown. It is also unclear if the new administration is contemplating taking direct action against states that have already created robust adult use markets, such as Colorado and Washington, or whether it may seek to prevent others, like California, from proceeding to implement an adult use program. In the wake of Spicer’s remarks, officials from several states that have legalized adult use warned that they will resist any attempt by the federal government to interfere with their programs. If anything, Spicer’s comments raise more questions than answers.

With marijuana legalization issues polling at their all-time highest numbers, it appears that any attempt by the federal government to shut down or interfere with voter-approved state adult use markets would likely face strong popular opposition. We will be monitoring these issues as they evolve at the state and federal level. While Spicer’s comments suggest a coming time of uncertainty for the adult use industry, from this uncertainty there is the potential that the question of changing federal law may now actually gain some traction in Congress.

Disclaimer:

Possessing, using, distributing, and/or selling marijuana or marijuana-based products is illegal under federal law, regardless of any state law that may decriminalize such activity under certain circumstances. Although federal enforcement policy may at times defer to states’ laws and not enforce conflicting federal laws, interested businesses and individuals should be aware that compliance with state law in no way assures compliance with federal

law, and there is a risk that conflicting federal laws may be enforced in the future. No legal advice we give is intended to provide any guidance or assistance in violating federal law.