

Practice Update

After Special Session Cliffhanger: Florida Legislature Passes Medical Marijuana Implementation Bill

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Florida lawmakers have finally passed legislation to implement Amendment 2, Florida's medical marijuana constitutional amendment. The breakthrough came during the last afternoon of a three-day special session called after legislators were unable to reach a consensus on the rules for the program during the regular session.

Although the Amendment was immensely popular at the ballot box, receiving over 6.5 million votes (71%) in November 2016, its implementation was largely stalled as the Legislature and Department of Health considered how to implement its broadly written provisions.

The new legislation, which Governor Rick Scott has been quoted as stating he will "absolutely" sign into law, is far from perfect yet still reflects a massive step for medical marijuana in the Sunshine State. Highlighted below are some of the significant aspects of the legislation.

Canna-Businesses

Vertical integration continues but more licenses are on the way.

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- The bill directs the Department of Health to issue 10 additional licenses to operate full-service marijuana businesses that cultivate, process and dispense the product in the state. Of these 10 new licenses, several are allocated to nurseries that unsuccessfully applied for licenses two years ago under Florida's earlier (and much more limited) low-THC medical marijuana program. Another one of the licenses is allocated to a qualified member of the Black Farmers and Agriculturalists Association-Florida Chapter. The remaining licenses will be issued by the Department of Health with preference given to up to two applicants that either are or were involved in Florida's citrus industry.
- After the first 10 additional licenses are issued, the Department of Health will issue four more licenses each time an additional 100,000 active patients are added to the medical marijuana patient registry.
- The bill stipulates that each license holder may operate a maximum of 25 dispensing facilities throughout the state until 100,000 active patients are added to the registry. At that point, licensees will be allowed to open an additional five dispensing locations. Thereafter, each time an additional 100,000 active patients are added to the registry, licensees will be allowed to open five more dispensing locations, subject to a maximum number of locations per region based on population. The bill also allows licensees to sell unused dispensary "slots" to other licensees in the event that they do not wish to open as many locations as authorized.

Product quality control and tracking is mandatory.

- The bill requires licensees to implement seed-to-sale tracking for all product.
- Licensees are required to have all processed marijuana tested for potency and contaminants by an independent laboratory prior to dispensing.

Patients and Doctors

No more 90-day waiting period for patient certifications.

- The bill eliminates the former requirement that there be a 90-day doctor/patient relationship prior to the issuance of a medical marijuana certification to a patient.

Shorter (and less expensive) course required for physicians.

- The bill stipulates that physicians must complete a two-hour course administered by the Florida Medical Association or the Florida Osteopathic Medical Association prior to issuing patient certifications, while the prior program mandated an 8-hour course.

Other interesting provisions include:

- **No smoking:** The bill bans the smoking of medical marijuana. Instead, patients may either vape, ingest marijuana infused edibles or capsules, or apply topical preparations.
- **Minors:** The certification of two doctors is required in order for medical marijuana to be dispensed to a minor.
- **Pregnant women:** The bill prohibits pregnant women from obtaining medical marijuana except for the low-THC variety.
- **Ownership interests:** The bill prohibits doctors that certify medical marijuana from having financial interests in licensees or testing labs.
- **Chronic pain:** In addition to the “debilitating diseases” enumerated in the Amendment and debilitating conditions of “the same kind or class” specified in the Amendment, the bill provides that patients may receive medical marijuana if they have chronic pain related to any of the named diseases or are terminally ill.

- **No sales tax:** The bill provides that medical marijuana is not subject to Florida sales tax, similar to other medicine.
- **Quantity limits:** The bill allows patients to obtain a physician certification for a 70-day supply, along with two refills, before having to return for another visit.
- **Medical research funding:** For the 2017-2018 fiscal year, the bill allocates \$750,000 in state funds to the Coalition for Medicinal Cannabis Research and Education at the H. Lee Moffitt Cancer Center and Research Institute to conduct medical cannabis research.

These are just a sample of some of the provisions in the new legislation. As implementation begins, it is expected that certain interests will file litigation seeking to challenge some of the provisions identified above. Importantly, it is not expected that these challenges will further delay implementation of the program as these matters wind their way through the courts.

As always, the Akerman's Regulated Substances Practice will be closely monitoring these and other related developments at the federal, state, and local level.

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.