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Practice Update

The Illinois Medical Cannabis Pilot Program: Accepting Applications

September 11, 2014

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Between September 2014 and December 2014, the Illinois Department of Public Health will be accepting applications from patients and caregivers to become part of the Illinois Medical Cannabis Pilot Program ("Pilot Program"), which was created by the adoption of the Illinois Compassionate Use of Medical Cannabis Pilot Program Act ("Act") and will be effective January 1, 2015.

The purpose of this Pilot Program is to protect patients with "debilitating medical conditions," as well as their physicians and providers, from arrest and prosecution, criminal and other penalties, and property forfeiture if patients engage in the medical use of cannabis. The Act recognizes the medical utility of cannabis but also noted that Illinois law should distinguish between the medical and non-medical use of cannabis.

Currently, there are 37 qualifying debilitating medical conditions that make a patient eligible for the program, including AIDS, ALS, cancer, Crohn's disease, fibromyalgia, glaucoma, lupus, multiple sclerosis, Parkinson's disease, and traumatic brain injury. Beginning January 1, 2015, seizures, including those characteristic of epilepsy, will be accepted as a debilitating medical condition.

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The Act authorizes qualifying registered patients and designated caregivers to possess up to 2.5 ounces of medical cannabis in a 14-day period from an approved medical cannabis dispensary. In order to be a qualifying registered patient, he/she must submit the required application to the Illinois Department of Public Health, which requires, among other things, a written certification from a licensed physician with whom the patient has a "bona fide physician-patient relationship," that is, a relationship in which the physician has ongoing responsibility for the assessment, care, and treatment of a patient's debilitating medical condition.

Precautions

While the Act legalizes the medical use of cannabis for qualifying medical conditions, the Act does not provide a *carte blanche* for even the medical use of cannabis. For example, the Act specifically states that it does not permit any person to engage in, and does not prevent the imposition of any civil, criminal, or other penalties for activities such as:

- Undertaking any task under the influence of cannabis, when doing so would constitute negligence, professional malpractice, or professional misconduct;

- Possessing and using cannabis in a school bus; on grounds of any preschool or primary or secondary school; any correctional facility; in a vehicle not open to the public unless the medical cannabis is reasonable secured, sealed and reasonably inaccessible while the vehicle is moving; in a private residence that is used to provide child care or other similar social service;

- Smoking medical cannabis in any public place where an individual could reasonably be expected to be observed by others, in a health care facility, or any other place where smoking is prohibited under the Smoke Free Illinois Act; and

- Using or possessing cannabis if that person does not have a "debilitating medical condition" and is not a registered qualifying patient or caregiver.

Moreover, no person who has a prior felony conviction under the Illinois Controlled Substances Act, Cannabis Control Act, or Methamphetamine Control and Community Protection Act, or similar provision in a local ordinance or "other jurisdiction" is eligible to receive a registry identification card. Dispensary applicants must not have a conviction for a violent crime or a violation of state or federal controlled substances laws. Similarly, a principal officer or board member of a cannabis cultivation center who has any prior felony conviction must be denied an application for a cultivation center permit.

Federal Regulations and Anti-Money Laundering Laws

While the Act provides restrictions and authorizes only the medical use of marijuana in Illinois, the possession, use, and distribution of marijuana remains illegal under the federal Controlled Substances Act, 21 U.S.C. §§ 801, *et seq.* And, even though the now-familiar Deputy Attorney General James M. Cole Memo indicates that federal investigative and prosecutorial resources will focus on certain enforcement priorities, marijuana nonetheless remains an illegal controlled substance under federal law.

Similarly, financial transactions (i.e., cash bank deposits) conducted with profits earned from the sale of marijuana for the promotion and carrying on of an approved Illinois medical cannabis dispensary may violate current federal money laundering laws. *See, e.g.,* 18 U.S.C. §§ 1956 and 1957. Although the Financial Crimes Enforcement Network ("FinCen") has provided guidance for banks on the provision of financial services to marijuana-related businesses in states where such business is legal under state law, and FinCen has recently acknowledged that over 105 individual financial institutions from states in more

than one third of the country engaged in banking relationships with marijuana-related businesses, the term “specified unlawful activity” under federal money laundering laws still encompasses what Illinois is now making legal, that is, the possession, use, and distribution of marijuana.

Unclear Road Ahead

The conflict between federal and state marijuana laws poses problems for individuals and business owners seeking to apply to be a registered medical cannabis dispensary or cultivation center. Considering the momentum and direction of state laws authorizing the medical use of cannabis, it is likely that federal laws may change upon an Act of Congress in order to provide medical relief to those with debilitating medical conditions. It is reasonable to expect the Pilot Program to undergo bumps in the road as policies and procedures continue to evolve in this area, and individuals or businesses seeking to participate in the Pilot Program should seek the advice and representation of legal counsel every step of the way.

What remains clear, however, is that under both federal and Illinois law, it is illegal for a cannabis dispensary to be located within 1,000 feet of a public or private school or secondary school or day care center, and that public corruption or campaign contributions to any political committee by a medical cannabis cultivation center or dispensary is punishable under both federal and Illinois law.

The Pilot Program is currently set to expire on January 1, 2018.

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information contained in this Practice Update without seeking the advice of legal counsel. Prior results do not guarantee a similar outcome.