

Update on the New Jersey Compassionate Use Medical Marijuana Act

by Nicole DiMaria, Esq.

This is a follow-up to previous articles published in the May/June 2010 and September/October 2010 issues of the Garden State Focus regarding New Jersey's medical marijuana law.

Uncertainty continues to surround New Jersey's medical marijuana law, the New Jersey Compassionate Use Medical Marijuana Act (the "Act"). While the New Jersey Department of Health and Senior Services ("DHSS"), the Department of Law and Public Safety, Division of Consumer Affairs and Board of Medical Examiners (the "BME") have taken steps to implement the law, the ultimate scope of the Act and the precise date of its full implementation remains to be seen.

Assembly and Senate Reject DHSS Proposed Regulations

The DHSS released its proposed regulations to implement the Act on October 6, 2010 (the draft regulations can be accessed at http://www.state.nj.us/health/draft_mm.pdf). However, pursuant to authority under the New Jersey Constitution, the Act's co-sponsors, Senator Nicholas Scutari and Assemblyman Reed Gusciora, presented concurrent resolutions in the New Jersey Legislature (ACR151 and SCR130) to deem the DHSS proposed regulations inconsistent with the legislative intent of the Act and compel the Commissioner to revise them. The resolutions passed the Assembly on November 22¹ and the Senate on December 13.²

The resolutions take issue with the following aspects of the proposed DHSS regulations:

- *Two Categories of ATCs* – While the Act provides for six non-profit alternative treatment centers ("ATCs") throughout the state to grow and dispense medical marijuana, the proposed regulations separate ATCs into two categories: "dispensary" ATCs, and "plant cultivation" ATCs. The regulations would allow two dispensary ATCs, which would not be permitted to grow marijuana, and four plant cultivation ATCs, which would not be permitted to dispense marijuana directly to patients.

- *Physician Must Certify Patient "Has Not Responded to Conventional Medical Treatment"* – The Act lists the medical conditions that qualify as "debilitating medical conditions" and which are permitted to be treated with medical marijuana. With respect to one category of conditions relating to seiz-



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ure disorders, intractable skeletal muscular spasticity and glaucoma, a patient's condition must be "resistant to conventional medical therapy" in order to qualify as a "debilitating medical condition" under the Act. The Act does not require this standard to be met with respect to other conditions, such as terminal cancer and multiple sclerosis. The proposed regulations, however, require a physician to certify that a patient "has not responded to conventional medical treatment" as a prerequisite to treatment for any condition.

- *DHSS Will Not Consider Additional Qualifying Medical Conditions for Two Years* – The Act provides that the DHSS may add other medical ailments to the list of "debilitating medical conditions." While the Act is silent with respect to the timing for the DHSS's consideration of additional debilitating medical conditions, the proposed regulations state that the DHSS will not accept petitions to approve other medical conditions for at least two years after the medical marijuana program is implemented.

- *THC Content and Types of Strains Restricted* – The Act is silent with respect to the chemical attributes of the marijuana that may be cultivated and dispensed under the Act. However, the proposed regulations establish a 10 percent limit on the medical marijuana's level of tetrahydrocannabinol (THC), one of the active ingredients in marijuana. The DHSS has stated that if plants are found to contain more than 10 percent THC, they are to be destroyed. In addition, the proposed regulations provide that an ATC may cultivate no more than three strains of marijuana.

The Commissioner of DHSS will now have 30 days to amend or withdraw its regulations, or the Legislature may, by passage of another concurrent resolution, exercise its authority under the New Jersey Constitution to invalidate the regulations in whole or in part.

Other Developments

Shortly after passage of the resolutions, Senator Scutari called upon the Christie administration to work toward

compromise on the contested issues. Governor Christie had previously discussed a compromise with Assemblyman Gusciora on December 3, pursuant to which Governor Christie proposed to permit six dispensary ATCs and remove the requirement in the draft regulations that conventional medical therapies be exhausted for all illnesses prior to medical marijuana treatment.³

Senator Scutari has also taken issue with regulations proposed by the BME regarding physician participation in the medical marijuana program (the BME proposed regulations are available at http://www.state.nj.us/lps/ca/proposal/bmepro_111510.HTM). On December 13, the Senator introduced a resolution (SCR140) similar to the concurrent resolutions that passed with respect to the DHSS proposed regulations, which would declare the BME's regulations inconsistent with the legislative intent of the Act.⁴ Senator Scutari believes provisions in the BME's proposed regulations – that, for instance, require physicians to periodically attempt to stop or decrease patients' use of medical marijuana – are too strict and will discourage physician participation.⁵

In the meantime, the State is moving ahead with its implementation plans. For instance, the State began accepting physician pre-registrations for the medical marijuana program on October 26, 2010 at <https://njmmp.nj.gov/njmmp/>; once physicians register and are verified/approved, physicians will be able to submit patient names to the medical marijuana patient registry. In addition, the DHSS is soon expected to issue application forms for ATCs. However, depending on the outcome with respect to the efforts to revise, or possibly to repeal and replace, the DHSS's and BME's proposed regulations, it is uncertain whether any aspects of the State's current plans to implement the Act will go forward.

About the Author

Nicole DiMaria, Esq. is Counsel at Wolff & Samson PC, located in West Orange. Nicole is a member of the firm's Health Care and Hospital, and Corporate and Securities Groups,

representing health care professionals, physician groups, health care and hospital systems, ambulatory care facilities, and other health-related entities. Nicole provides both health care corporate and regulatory counseling, advising clients on matters such as Federal Stark and Anti-Kickback Law compliance, HIPAA compliance, Medicare/Medicaid reimbursement, state licensing, and state health care/professional regulatory compliance. Nicole can be reached at ndimaria@wolffsamson.com.

Footnotes

¹ Susan K. Livio, *N.J. Assembly votes against Christie's medical marijuana rules, but Senate delays action*, The Star-Ledger, Nov. 22, 2010, available at http://www.nj.com/news/index.ssf/2010/11/nj_assembly_calls_on_christie.html.

² Susan K. Livio, *N.J. Senate rejects Gov. Christie's proposed rules for medical marijuana program*, The Star-Ledger, Dec. 13, 2010, available at www.nj.com/news/index.ssf/2010/12/nj_senate_rejects_gov_christie.html.

³ Susan K. Livio, *N.J. medical marijuana rules proposed by Gov. Christie are deemed too strict by Legislature*, The Star-Ledger, Dec. 13, 2010, available at http://www.nj.com/news/index.ssf/2010/12/nj_medical_marijuana_rules_pro.html.

⁴ *Id.*

⁵ *Id.*



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