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Public Health Council Approves Medical Marijuana Regulations

On May 8, 2013, the Massachusetts Public Health Council approved regulations to implement the new state law that permits the medical use of marijuana, effective May 24, 2013. Massachusetts's voters approved Ballot Question 3 with a more than 63% vote. The law permits qualifying patients with specifically defined medical conditions and other debilitating symptoms to obtain, use and in limited circumstances grow marijuana for medicinal use.

A qualifying patient who can demonstrate either a verified financial hardship, a physical inability to access transportation or the lack of a treatment center within a reasonable distance of the patient's home may obtain a "hardship cultivation registration." The regulations make it clear that it is DPH's intent to minimize home-cultivation. This is accomplished by requiring low or no cost programs at dispensaries and home delivery by treatment centers. Availability of home delivery systems will minimize claims that no treatment center is within a reasonable distance of a patient's home and that a patient is unable to access transportation.

Hardship cultivation is further limited by the fact marijuana is an illegal controlled substance under federal law and, as such cannot be grown in federally subsidized public housing. Claims for "reasonable accommodation" for medical marijuana use in public housing cannot be accepted for this reason as well.

A comprehensive review of the regulations will be forthcoming. However MAHB's initial review confirms that DPH recognized and codified the legal authority of local municipalities to further regulate medical marijuana, without requiring local regulation. The regulations do not mandate any local involvement; but they don't preempt it either. Local governments, including local boards of health can pass local laws relative to medical marijuana, as long as they don't conflict with the state law. For instance, local governments can regulate the location of treatment centers, but cannot ban treatment centers. Banning treatment centers would conflict with the state law because the state law specifically authorizes such centers.

The following provisions of the regulations may be of particular interest to local boards of health.

1. Treatment centers may not be sited within 500 feet of a school, day care center or any facility in which children commonly congregate. Cities and towns can further regulate this.
2. The regulations do not prohibit access to treatment centers by authorized local law enforcement or local public health, local inspectional services or other local permit-granting agents. MAHB, on behalf of the Coalition of Local Public Health, provided oral and

written testimony requesting that this be made clear in the regulations. The regulation was amended to make this clear.

3. DPH added a section to the regulations that clarifies that the regulations do not affect the rights of landlords.
4. A registered marijuana dispensary, its agents and all other registered persons must comply with all local rules, regulations, ordinances and bylaws.
5. DPH does not mandate any involvement by municipalities or local boards of health in the regulation of dispensaries, qualifying patients with hardship cultivation registrations or any other aspect of medical marijuana use. However nothing in the regulations preempt local oversight and regulation, including fee requirements.
6. The regulations make it clear that edible marijuana products (MIPs) are not defined as food. This was purposeful. If MIPs were defined as food, local boards of health would have to issue food service establishment permits to the dispensaries. DPH felt that this would put an undue burden on local boards of health. Instead, the regulations require that edible MIPs be produced in accordance with food sanitation requirements and that all MIP handlers comply with sanitary requirements. Local boards of health have the authority, but not the obligation to further regulate dispensaries.
7. The application process must include any demonstration of support or non-opposition furnished by the municipality where the dispensary would be located.
8. The regulations allow for waste disposal methods that are environmentally friendly, such as composting, while ensuring disposal methods will mitigate potential for diversion.

DPH intends to conduct a hearing on the promulgation of fees to generate revenue necessary to implement the new medical marijuana program. DPH will also issue guidance for each category of medical marijuana registrant. In addition, DPH will maintain and update Frequently Asked Questions on its website, www.mass.gov/medicalmarijuana.