

New York Department of Health Regulations Boost Struggling Medical Marijuana Industry

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Cannabis Law Coverage at Wilson Elser

The New York cannabis industry has long been considered one of the country's most restrictive, and the numbers have shown anemic growth in certified patients and registered practitioners since medical marijuana became legal when Governor Andrew M. Cuomo signed the Compassionate Care Act in January 2014. However, over the past several months, the New York State Department of Health (Department) has issued a number of regulatory changes expanding access to medical marijuana in the state, resulting in double-digit increases in patients and eligible practitioners since the regulations were enacted. (See [5/5/17 NYSDOH Press Release](#) "New York State Department of Health Adds Thousands of New Patients to Medical Marijuana Program Following the Addition of Chronic Pain.") Specifically, the Department added "chronic pain" as a qualifying condition for medical marijuana, and now permits nurse practitioners and physicians' assistants to certify patients for medical marijuana. The Department also recently began publishing the names of certified medical providers on its website, facilitating access for patients. But are these changes enough to save New York's struggling medical marijuana industry?

The Compassionate Care Act authorized five cannabis companies to dispense medical marijuana in the state through a network of dispensaries beginning in January 2016. Since that time, approximately 19,000 certified patients have joined the Medical Marijuana Program, out of a potential pool of some 200,000 to 500,000 eligible patients. Additionally, approximately 1,000 practitioners have registered to certify medical marijuana patients in the state. (See "Assessing New York's Medical Marijuana Program: Problems of Patient Access and Affordability," **The Drug Policy Alliance**, June 2016.) These numbers, while not insignificant, have not grown at the rates anticipated or expected by the industry.

In fact, on April 28, 2017, the New York Medical Cannabis Industry Association, on behalf of four of New York's five medical cannabis developers, filed a lawsuit against the Department regarding the Department's plan to issue licenses to five additional cannabis companies. They argue that the state's plan would lead to further losses to the companies currently licensed, and that "patient demand is currently too low to support an expansion of the supply market for medical marijuana." The lawsuit further alleges that "all five of the [Medical Cannabis Industry Association's] members are sustaining tremendous operating losses, after having made millions of dollars in initial investments."

The above-referenced report issued by The Drug Policy Alliance in June 2016 found the biggest reason patients weren't enrolled in New York's Medical Marijuana Program was that they hadn't found a doctor to prescribe the medicine. As of the date of that report, there were just under 600 physicians across New York registered for the program. The Department has been incrementally enacting regulations that have expanded the medical marijuana industry in New York, and may provide the jolt the industry so desperately needs.

In November 2016, the Department increased the types of health care providers eligible to certify patients for the Medical Marijuana Program from 90,000 physicians to a pool of 120,000, including 30,000 nurse practitioners and physicians' assistants. Presently, just over 1,000 health care providers are actually registered to certify patients for medical marijuana in New York. It remains to be seen whether these regulatory changes spur enough eligible providers to certify the growing number of patients for the Medical Marijuana Program.

In March 2017, the Department added chronic pain as a qualifying condition for access to medical marijuana. This brings the number of qualifying conditions to eleven, along with cancer, HIV infection or AIDS, amyotrophic lateral sclerosis (ALS), Parkinson's disease, multiple sclerosis, damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity, epilepsy, inflammatory bowel disease, neuropathies and Huntington's disease. Since the addition of chronic pain to the other qualifying conditions, there has been an increase of more than 3,350 patients in New York, a nearly 20 percent increase in medical marijuana certified patients since the regulation was enacted. (See 5/5/17 NYSDOH Press Release referenced above.)

The new regulations define chronic pain as "any severe debilitating pain that the practitioner determines degrades health and functional capability; where the patient has contraindications [meaning the patient has a specific condition/situation in which a therapy normally recommended to manage chronic pain shouldn't be used because it may be harmful to that patient], has experienced intolerable side effects, or has experienced failure of one or more previously tried therapeutic options; and where there is documented medical evidence of such pain having lasted three months or more beyond onset, or the practitioner reasonably anticipates such pain to last three months or more beyond onset."

The increasing numbers of certified medical marijuana patients and registered practitioners are positive developments for the cannabis industry in New York, but more changes are necessary. A bi-partisan bill that would add post-traumatic stress disorder (PTSD) as a qualifying condition is working its way through the New York Legislature and would likely further expand the potential pool of eligible patients. The Department could also adopt more of the recommendations identified in its two-year report on the Medical Marijuana Program, such as streamlining the manufacturing process and the registration process for practitioners. Concerted legislative, regulatory, and entrepreneurial efforts are needed to reinvigorate New York's cannabis industry and ensure that eligible patients can obtain the relief they need.

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