Medical Marijuana Roundtable: Top Ten Takeaways

December 15, 2014

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Minnesota recently became the latest state to permit the limited use of medical marijuana for treating certain health conditions. In early October, the Department of Health issued proposed regulations to implement the new law. Legalization affects a broad range of individuals and organizations—hospitals, physicians, and other health care providers that provide marijuana, companies interested in becoming manufacturers or dispensers of medical marijuana, and businesses that employ users. Gray Plant Mooty recently hosted a panel of executives who gave an overview of the new law and the proposed regulations; shared providers' options for ordering marijuana for their patients; discussed what health care facilities can do to accommodate or restrict the use of medical marijuana; and shared implications of the law for employers.

In case you were unable to join us, here are the ***top ten takeaways*** from the event. You may also download a recording of the presentation.

1. While 23 states, the District of Columbia, and Guam have legalized medical marijuana, each law is different.

- State laws vary based on numerous factors, including the regulation of dispensaries, whether medical marijuana is available for general use or qualifying conditions only, whether patient registration is mandatory or voluntary, the amount and form of marijuana permitted, and the status of retail sale.

2. Minnesota's law is one of the most restrictive laws in the country.

- Use is permitted only in liquid, pill, or vapor form; the list of qualifying conditions is limited; and only two manufacturers will grow, process, and distribute medical cannabis products.

3. The Department of Health was given very little time to implement the new law.

- There are ***proposed regulations*** governing the activities of patients and providers. While these are not final, they give a sense of how the Department might regulate providers.

4. Prior to the passage of the law, Minnesota law enforcement was concerned that the legalization of medical marijuana would be "the camel's nose under the tent" and serve as a front for larger criminal enterprises.

- While the camel's nose is now under the tent, the nose is very small—Minnesota's law is limited, which restricts the ability of individuals to use it as a guise for other criminal activity.

5. Two manufacturers have now been selected.

- Minnesota Medical Solutions will service Otsego, Moorhead, Minneapolis, Rochester, and Maple Grove; Leafline Labs will service Cottage Grove, Eagan, Hibbing, St. Cloud, and St. Paul.

6. The medical records of patients enrolled in the medical cannabis program must be provided to the Minnesota Department of Health.

- The data reported to the registry may be used in aggregate, non-identifiable form as part of scientific research conducted by the Minnesota Department of Health; so while patient records will be provided, there is less risk of individual identification.

7. There are special employment protections in the Minnesota medical cannabis law.

- An employer cannot discriminate against a person for being on the state registry or due to a positive marijuana test result unless the action falls under one of the exceptions.

8. Employees are not entitled to protection if they used, possessed, or were impaired on work premises or during employment hours.

- A challenging, practical issue for employers will be how to determine if an individual is "impaired." Because drug tests in Minnesota are performed using a blood or urine sample, the marijuana may show up in the individual's system long after the physical effects of the drug have worn off.

9. While medical cannabis is now legal in Minnesota, it remains illegal under federal law.

- Under federal law, Marijuana is a Schedule 1 Drug, similar to heroin and LSD.

10. Federal prosecution remains a possibility.

- The Cole Memoranda makes clear that marijuana remains an illegal drug under the Controlled Substances Act, but identifies eight enforcement areas that federal prosecutors should prioritize. Thus, federal prosecutors may exercise their discretion and elect not to prosecute if individuals are complying with their state law.

If you have comments or questions regarding the roundtable, please contact Jesse Berg at jesse.berg@lathropgpm.com (612.632.3374).