Legislature Significantly Amends the West Virginia Medical Cannabis Act

Thursday, May 23, 2019

On the first day of West Virginia’s legislative special session, the West Virginia Legislature enacted Senate Bill 1037, which made significant amendments to the West Virginia Medical Cannabis Act (the “Act”). The legislature removed various impediments to growing, processing, and dispensing medical cannabis throughout the State. Notable changes under Senate Bill 1037 include:

- **Increasing the number of available dispensary permits**
  - The Act will now provide up to 100 dispensaries throughout the State (instead of 30).
  - An applicant can now have a permit for up to 10 dispensaries.

- **Authorizing vertical integration of medical cannabis organizations**
  - An applicant can be a grower, processor, and a dispensary.

- **Taxing medical cannabis**
  - Growers/processors are no longer paying state taxes on the sale of medical cannabis to dispensaries; the tax burden is shifted to dispensaries. Dispensaries are subject to a privilege tax of 10% on gross receipts from the sale of medical cannabis to a patient or caregiver.
  - Dispensaries are explicitly exempt from any kind of sales or use tax, including any kind of special district excise tax, or any county or municipal sales tax.

- **Providing physicians with greater discretion when issuing a certification for medical cannabis to a patient**
  - Physicians no longer have to care for a patient for at least 6 months or otherwise determine that opiate therapy for the patient would be ineffective prior to issuing a certification for medical cannabis.

- **Removing the requirement that a pharmacist/physician be present at dispensaries when dispensing medical cannabis**
  - The presence of a pharmacist/physician at dispensaries would greatly increase the dispensary’s operating costs under the Act.

- **Disbanding medical cannabis “regions” throughout the state**
  - In place of defined regions, permits will be awarded to medical cannabis organizations based on a scoring rubric as outlined in the Act and crafted by the Office of Medical Cannabis.

- **Imposing in-state residency requirements for permit holders**
  - An applicant for a grower, processor, or dispensary permit must be a West Virginia resident. If the applicant is a business, it must be majority-owned by a West Virginia resident.

- **Creating a pre-registration process for patients**
  - Eligible patients will have the ability to pre-register for medical cannabis. Since the state cannot accept application fees yet, this has no practical impact at this time.

In sum, Senate Bill 1037 provides needed clarity to patients, investors, businesses and local communities.

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