Recent Developments Concerning Implementation of the New Jersey Compassionate Use Medical Marijuana Act

by Nicole DiMaria, Esq.

This is a follow-up to a previous article published in the May/June 2010 issue of the Garden State Focus, “The New Jersey Compassionate Use Medical Marijuana Act – Questions Abound.”

New Jersey’s medical marijuana law – the New Jersey Compassionate Use Medical Marijuana Act (the “Act”) – faces an uncertain future. The effective date of the Act has now been delayed, and Governor Christie has made proposals to amend the Act. The following provides an overview of developments with respect to the Act’s implementation since June, 2010.

Delay of Act’s Effective Date: The Act was signed into law on January 18, 2010, by then-Governor Corzine before he left office. Soon into his administration, Governor Christie raised concerns with respect to the Act’s implementation. In March, 2010, the Governor and the Commissioner of the New Jersey Department of Health and Senior Services (“NJDHSS”), Poonam Alaigh, requested the Act be extended due to legal and security issues. Although the Act’s original sponsor, Senator Nicholas Scutari, did not initially support the extension request, State lawmakers ultimately approved a ninety day extension in June. The extension will provide the NJDHSS – which is largely responsible for the Act’s implementation – until approximately January, 2011 to issue regulations under the Act.

Gov. Christie is Advocating Amendments to the Act to Foster Centralized Growing and Distribution – Initially Proposed Rutgers/Hospital Growing and Distribution Amendment Plan Will Not Go Forward. As currently written, the Act provides for the issuance of permits to private “alternative treatment centers” (“ATC(s)”) to distribute medical marijuana in accordance with rules and processes established by the NJDHSS. The Christie administration is seeking to amend the Act to address its concerns regarding potential security and safety threats under the ATC distribution model. In particular, Governor Christie proposed a centralized growing and distribution program whereby Rutgers University’s agricultural center would grow the marijuana and teaching hospitals would dispense it. This plan would eliminate ATCs.

While the Act’s original sponsors expressed a degree of support for the Rutgers plan, Rutgers issued a statement in July that it was not interested. The University explained it was not willing to put in jeopardy its federal grant and research funding – which is provided under the presumption that Rutgers is not violating the law – as a result of its involvement with marijuana, the possession of which remains a federal offense, regardless of any protection afforded under state law. Similar federal law concerns were expressed in an op-ed by Kate Greenwood, a research fellow at the Center for Health and Pharmaceutical Law and Policy at Seton Hall University School of Law, with respect to hospitals’ legal ability to participate in a centralized medical marijuana distribution system.

Next Steps? The Act’s original sponsors and medical marijuana patient advocacy groups want the law implemented as written. While it is not clear whether the Christie administration will continue to seek amendments to the Act, according to Governor Christie’s spokesperson, Michael Drewniak, the administration is considering “other options” and will continue “to work diligently to implement a high-quality and secure program for growing and distributing medical-use marijuana.” Meanwhile, the NJDHSS has stated it is “now meeting with public stakeholders as part of the effort to design an effective program.” Whether that program will be based on the current law or a revised, more restrictive version, remains to be seen.

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.