

# Update on Implementation of the New Jersey Compassionate Use Medical Marijuana Act

by Nicole DiMaria, Esq.



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*This is a follow-up to previous articles published in the May/June 2010, September/October 2010, and January/February 2011 issues of the Garden State Focus.*

It has been almost two years since the passage of New Jersey's medical marijuana law, the New Jersey Compassionate Use Medical Marijuana Act (the "Act"), and New Jersey still does not have a functioning medical marijuana program. After several months of uncertainty with respect to whether the program would go forward, the six alternative treatment centers (ATCs) that were recently licensed by the Department of Health and Senior Services (DHSS) to grow and/or dispense marijuana under the Act now have the go-ahead to finalize their preparations for operation. Despite all the hurdles along the way, patient access to medical marijuana may now be in sight.

The following provides an overview of developments with respect to the Act's implementation since January, 2011.

**Changes to DHSS Regulations:** The DHSS released its proposed regulations to implement the Act on October 6, 2010 (the "Proposed Rule").<sup>1</sup> In response to a resolution passed by the New Jersey Legislature on December 13, 2010 – which declared portions of the Proposed Rule to be inconsistent with the Act – the DHSS issued revised proposed regulations on February 22, 2011 (the "Revised Proposal").<sup>2</sup> The following is an overview of the Revised Proposal's key changes to the Proposed Rule:

- Six ATCs will be licensed to both grow and dispense medical marijuana; the Proposed Rule had allowed for four ATCs to dispense, while only permitting the remaining two ATCs to grow marijuana.
- ATC satellite dispensing locations, which were permitted in the Proposed Rule, are now prohibited.
- Home delivery of medical marijuana, which was permitted under the Proposed Rule, is now prohibited.
- The prerequisite that a patient's condition be "resistant to conventional medical therapy" in order for the patient to be treated with medical marijuana is now only

proposed to apply to the following conditions: seizure disorder, including epilepsy; intractable skeletal muscular spasticity; or glaucoma; the Proposed Rule had initially made this a prerequisite with respect to all medical conditions.

## Selection of ATCs

In spite of the fact that the DHSS had not, and has not yet still, issued a final rule implementing the Act, the DHSS proceeded with its ATC licensure process and accepted ATC licensure applications January 17, 2011 through February 14, 2011. On March, 21, 2011, the DHSS announced its selection of the following six ATCs:<sup>3</sup>

- Breakwater Alternative Treatment Center Corp., Central Region, to be located in Manalapan, Monmouth County.
- Compassionate Care Centers of America Foundation Inc., Central Region, to be located in New Brunswick, Middlesex County.
- Compassionate Care Foundation Inc., Southern Region, to be located in Bellmawr, Camden County.
- Compassionate Sciences, Inc., Southern Region, to be located in either Burlington or Camden County.
- Foundation Harmony, Northern Region, to be located in Secaucus, Hudson County.
- Greenleaf Compassion Center, Northern Region, to be located in Montclair, Essex County.

## Delay of Implementation of Act; Subsequent "Green Light"

Although marijuana possession/distribution remains illegal under Federal Law, the U.S. Department of Justice issued a memorandum to United States Attorneys on October 19, 2009 directing that they should not focus their federal enforcement resources in their States on "individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana."<sup>4</sup> While

this memorandum gave comfort to patients and others acting in compliance with State medical marijuana laws, letters issued in April, 2011 from U.S. Attorney John Walsh and others sparked uncertainty with respect to the Federal Government's enforcement intentions, as they indicated the Department of Justice's commitment to enforce the Federal Controlled Substance Act, in spite of the legality of the use of medical marijuana under State law.<sup>5</sup> In response, Governor Christie stated in mid-June that he would not permit the medical marijuana program to go forward until he received clarification regarding the Department of Justice's enforcement policy, particularly with respect to the potential prosecution of State employees who administer the Act.<sup>6</sup>

On July 19, 2011, Governor Christie gave the Act the green light, announcing that he had instructed the Commissioner of DHHS to move forward as expeditiously as possible to implement the medical marijuana program.<sup>7</sup> He stated that, although there was no assurance that those who operate in compliance with the Act will not be prosecuted under Federal Law, he did not believe that Federal enforcement resources would be directed at such individuals, particularly in light of the restrictive nature of New Jersey's program.<sup>8</sup> He acknowledged there was a risk in allowing the program to go forward, but as he explained: "I'm taking that risk because I believe that the need to provide compassionate pain relief to these citizens of our State outweighs the risk that we are taking in moving forward with the program as it is set up."<sup>9</sup>

### What Now?

As of the writing of this article, DHSS has still not fully implemented the physician and patient medical marijuana registry, which is necessary for the program's operation. As interested patients and providers await the grand opening of the six ATCs, they should inform themselves with respect to any administrative "hoops" they will have to jump through to qualify for participation.

Even assuming, however, that the program will be fully functioning in a relatively short time, patients and providers should expect fits and starts. Not only is the Act uncharted territory for New Jersey, it is essentially uncharted territory for the entire country. The Act stands apart from other similar State laws, as it is widely regarded as the most restrictive of any existing State medical marijuana program. Therefore, while New Jersey can feed off of other States' wisdom with respect to their programs, New Jersey's experience will undoubtedly be unique. We can most certainly expect additional hiccups along the way.

### About the Author

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<sup>1</sup>42 N.J. Reg. 2668(a) (Nov. 15, 2010).

<sup>2</sup>43 N.J. Reg. 340(a) (Feb. 22, 2011).

<sup>3</sup>New Jersey Department of Health and Senior Services Press Release, *New Jersey Department of Health and Senior Services Announces Licensing of Six Nonprofit Alternative Treatment Centers for Medicinal Marijuana Program*, March 21, 2011, available at [http://nj.gov/cgi-bin/dhss/njnewslines/view\\_article.pl?id=3681](http://nj.gov/cgi-bin/dhss/njnewslines/view_article.pl?id=3681).

<sup>4</sup>See U.S. Department of Justice Memorandum, *Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana*, Oct. 19, 2009, available at <http://www.justice.gov/opa/documents/medical-marijuana.pdf>; see also David Johnston and Neil A. Lewis, *Obama Administration to Stop Raids on Medical Marijuana Dispensers*, *The New York Times*, March 18, 2009, available at <http://www.nytimes.com/2009/03/19/us/19holder.html>.

<sup>5</sup>Transcript of New Jersey Governor Christie's Opening Remarks at the July 19, 2011 Press Conference on New Jersey's Medical Marijuana Program, available at [http://www.state.nj.us/health/med\\_marijuana\\_cc.shtml](http://www.state.nj.us/health/med_marijuana_cc.shtml).

<sup>6</sup>Ginger Gibson and Susan K. Livio, *Gov. Christie to delay implementing N.J.'s medical marijuana law*, *The Star Ledger*, June 16, 2011, available at [http://www.nj.com/news/index.ssf/2011/06/christie\\_to\\_delay\\_implementing.html](http://www.nj.com/news/index.ssf/2011/06/christie_to_delay_implementing.html).

<sup>7</sup>Transcript of New Jersey Governor Christie's Opening Remarks at the July 19, 2011 Press Conference on New Jersey's Medical Marijuana Program, available at [http://www.state.nj.us/health/med\\_marijuana\\_cc.shtml](http://www.state.nj.us/health/med_marijuana_cc.shtml).

<sup>8</sup>*Id.*

<sup>9</sup>*Id.*