

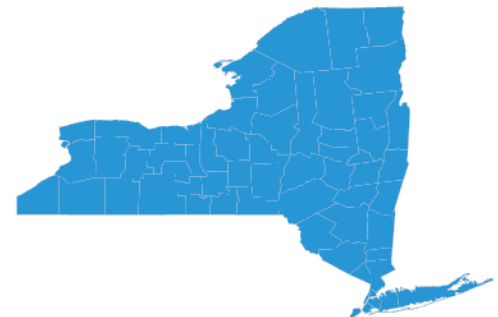
## New York becomes 23<sup>rd</sup> state to legalize medical marijuana

On July 7, Governor Andrew Cuomo signed into law the Compassionate Care Act, which establishes a medical marijuana program for New York State. The bill took effect immediately, but implementation will be delayed until the state health department issues regulations governing the manufacture, distribution, and use of medical marijuana. New York joins 22 other states and the District of Columbia that already allow the medical use of marijuana.

### Background

In 1996, California became the first state to legalize the medical use of marijuana. Now, nearly half of the states in the US, as well as Washington DC, have enacted similar laws. In sharp contrast, federal law continues to prohibit marijuana-related activities with limited exception, and provides criminal penalties for its distribution, possession, and use. Employers face significant compliance challenges surrounding conflicting state and federal regulations that govern employee use of medical marijuana.

Medical marijuana laws vary from state to state, and courts are just beginning to address many workplace issues surrounding its use. Initial rulings in states like California and Oregon recognize that state medical marijuana laws create a narrow exception for medical users (and their caregivers) from state criminal — but not employment — laws. While most of the 23 states that have legalized medical marijuana do not provide employee protections for its use, a handful provide some employment protections based on an employee's status as a state-authorized user. (See our [June 30, 2014 For Your Information.](#))



### New York's comprehensive medical marijuana program

The [Compassionate Care Act](#), signed into law by Governor Andrew Cuomo on July 7, establishes a pilot medical marijuana program for New York state. Implementation of the law, which took effective immediately and will sunset in seven years, may be delayed for as long as 18 months pending issuance by the state Department of Health (DOH) of regulations governing the manufacture, distribution, and use of medical marijuana.

Unlike most states, New York prohibits smoking medical marijuana. Rather, DOH-certified users will have to use a vaporizer, pills, or other method to consume. Regardless of its form, medical marijuana cannot be smoked, consumed, vaporized, or grown in a public place.

**Buck comment.** Other states, notably Colorado and Washington state, have adopted more permissive laws that also allow the recreational use of marijuana. In some states, users can obtain medical marijuana from a dispensary or grow their own.

## Serious conditions

For now, access to medical marijuana is limited to those patients who suffer from any of the following 10 specified diseases or medical conditions, but only if they have certain clinical symptoms (such as severe or chronic pain or seizures): cancer; HIV/AIDS; ALS (Lou Gehrig's disease); Parkinson's disease; multiple sclerosis; certain spinal cord injuries; epilepsy; inflammatory bowel disease; neuropathies; or Huntington's disease.

Going forward, the DOH Commissioner will have discretion to add other serious conditions. Within the next 18 months, the DOH is to determine whether medical marijuana will be allowed to treat symptoms of Alzheimer's, muscular dystrophy, dystonia, post-traumatic stress disorder, and rheumatoid arthritis.

## Certification and registry process

To control distribution, the law establishes a certification and registry process for physicians to administer the drug. Only licensed practitioners who are registered with the DOH and qualified to treat the above conditions will be able to certify a patient's need for medical marijuana. The DOH will issue registry identification cards to certified patients (and their designated caregivers) that will contain, among other things, any recommendations or limitations in the allowable form or dosage.

**Buck comment.** While insurance coverage is an open question in some states, health insurers and health plans will not be required under this law or the New York Insurance Law to cover medical marijuana.

**Registered organizations.** The law closely regulates who can produce and distribute marijuana for medical use. For-profit and not-for-profit organizations that seek to manufacture or distribute medical marijuana must register with the DOH, and meet security, recordkeeping, and other requirements. All marijuana manufacturing and dispensing by registered organizations must take place in New York.

The law limits the number of organizations that can register to five, each of which can operate up to four dispensaries statewide. Registered organizations will be able to dispense up to a 30-day supply of medical marijuana to individuals who have a registry identification card.

## Issues for employers

The new law provides certain nondiscrimination protections for individuals who lawfully use medical marijuana. Patients who are certified to use medical marijuana will be deemed to have a disability under the New York Human Rights Law. Thus, employers should carefully consider any requests for reasonable accommodation as they will have the same accommodation obligations with respect to applicants and employees who are certified patients as they now have to any other individual with a disability.

**Buck comment.** Given the debilitating or life-threatening nature of the conditions for which medical marijuana may lawfully be obtained, an employee who suffers from any of the serious conditions listed

above would likely be considered an individual with a disability — and protected against discrimination — under the Americans with Disabilities Act.

Like other states, New York will not prevent employers from enforcing policies that prohibit employees from working under the influence of a controlled substance. The law further provides that an employer is not required to do anything that would violate federal law or jeopardize a federal contract or funding. Thus, employers subject to federal laws such as the Drug Free Workplace Act of 1988 and drug-related restrictions under Department of Transportation regulations must continue to comply with them. In those circumstances, an employer would not have to employ an individual whose marijuana use is permitted by state law but is in conflict with a federal prohibition on its use.

## Enforcement

The law provides criminal penalties for individuals and physicians who violate it. A practitioner's certification of an individual's eligibility for medical marijuana is a felony if the practitioner knows or reasonably should know that the individual has no need for it. Recipients of medical marijuana who sell or trade it, or keep more than is needed for their own or another's use, will face misdemeanor charges.

## Taxation

The law establishes a 7% excise tax on the gross receipts from the sale of medical marijuana by a registered organization to a certified patient or designated caregiver.

## In closing

Although the new law took effect immediately, it will be some time before it is implemented. In the interim, employers will want to review their drug testing and other employment policies to make sure they are prepared to address a range of workplace issues surrounding the use of medical marijuana.

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