

Two New Laws Recognize Home Rule Authority to Regulate Medical Marijuana Operations *State and Federal Relations Department Update*

Yesterday, the Legislature overrode Governor Lepage's veto of LD 238, *An Act To Amend the Maine Medical Use of Marijuana Act*, as well as his veto of LD 1539, *An Act To Amend Maine's Medical Marijuana Law*, finally enacting both proposals into law.

Each bill replaces the relatively limited local control authorizations in the pre-existing Medical Use of Marijuana Act, which had allowed for municipal school setback moratorium ordinances and regulation of dispensaries, with express recognition of the home rule authority to comprehensively regulate registered medical marijuana caregivers, dispensaries, and testing and manufacturing facilities. Two limitations are imposed on home rule: municipal prohibitions on registered caregivers, as well as limitations on the number of registered caregivers, are not allowed.

Descriptions of these newly enacted laws are found below. LD 238 is designated "emergency" and therefore became effective July 9, whereas LD 1539 becomes effective 90 days after the Legislature finally adjourns the second special session that is currently underway.

[LD 238](#) - "An Act To Amend the Maine Medical Use of Marijuana Act" ***Emergency Enacted, Public Law 2017 chapter 447 (July 9, 2018)***

This bill provides for accredited third-party testing of medical marijuana, authorizes the manufacture of medical marijuana products using non-hazardous extraction and concentration processes, and requires processors who utilize hazardous substances to be certified as safe by a state-licensed professional engineer. The manufacture of medical marijuana products using non-hazardous extraction and concentration processes is authorized for all persons, subject to any forthcoming state rules, with "tier 1" processors authorized to possess up to 40 pounds of harvested marijuana, while "tier 2" processors are authorized to possess up to 200 pounds of harvested marijuana. The same is true for processing utilizing hazardous substances for extraction, provided the processors are certified as safe by a state-licensed professional engineer and have notified the state in advance of their intent to engage in marijuana extraction using inherently hazardous substances.

(Note: The term "primary caregiver" is replaced with "registered caregiver" in LD 1539).

[LD 1539](#) - "An Act To Amend Maine's Medical Marijuana Law" ***Enacted, Public Law 2017 chapter 452***

This bill re-writes much of Maine's Medical Use of Marijuana Act. Amendments made to the Act as a result of this legislation include the following:

Local Control. The Act's pre-existing municipal school setback and dispensary regulation authorities are replaced with express recognition of the comprehensive home rule authority to regulate registered medical marijuana caregivers, dispensaries, and testing and manufacturing facilities. Two general limitations are imposed on home rule: municipal prohibitions on registered caregivers, as well as limitations on the number of registered caregivers, are not

allowed. Another limitation, described below, grandfathers caregiver retail stores operating on the effective date of this law while applying a municipal opt-in requirement to storefronts aiming to open after the effective date.

Qualifying Patients. Four key changes are made with respect to patient activities:

- (1) Patients may now receive written prescription certifications to use medical marijuana for any medical condition their physician believes may be alleviated by the patient's use of marijuana;
- (2) The maximum per-patient prescription limit is expanded from 2.5 ounces to up to 2 pounds, and the amount that may be possessed by patients is expanded from 2.5 ounces to up to 8 pounds;
- (3) Each patient may grow a maximum of 6 mature plants, 12 immature plants, and unlimited seedlings;
- (4) Patients may share seeds and plants with one another;
- (5) Patients may use medical marijuana in certain assisted living and residential care facilities provided the use is consistent with facility policies; and
- (6) Patients may designate multiple primary caregivers rather than only one caregiver.

Caregivers. Seven key changes are made with respect to caregiver activities:

- (1) The term "primary caregiver" is replaced with a new distinction between un-registered and registered caregivers. Caregivers who only serve two household or family members are not required to register with the state. All other caregivers are required to register with the state and are referred to in the new law as "registered caregivers";
- (2) Registered caregivers are authorized to operate retail stores;
- (3) Each caregiver may grow a maximum of 30 mature plants, 60 immature plants, and unlimited seedlings;
- (4) Caregivers are allowed to employ any number of assistants (under the pre-existing Act employees were capped at one person per designated patient served);
- (5) Caregivers may transfer products between one another (under the pre-existing Act caregivers were only allowed to transfer products to dispensaries);
- (6) Tracking and reporting on seed and plant sourcing and sales is required of registered caregivers and dispensaries;

Municipal Opt-in Requirement and Grandfathering. Registered caregiver retail stores, registered dispensaries, marijuana testing facilities and manufacturing facilities not operating on the effective date of the legislation are prohibited from beginning to operate in a municipality until its legislative body has voted to adopt or amend an ordinance or approve a warrant article allowing such entities to operate. Municipalities are not authorized by the terms of this law, however, to prohibit those entities already operating with municipal approval prior to the effective date.

Dispensaries. This law authorizes the state to issue six additional dispensary certifications (in addition to the existing eight) until 2021, after which time there will be no cap on the number of dispensary certificates issued statewide. The law also removes the previous requirement that dispensaries operate as non-profits.

State Verification For Code Enforcement. State officials are required to verify within two business days the validity of registration identification cards and conduct authorized pursuant to that registration upon the request of a code enforcement officer, and the location at which the conduct is authorized if necessary to verify the card to the code enforcement officer. The code enforcement officer, or other municipal officer in municipalities without code enforcement officers, are required to keep the information received confidential.

Inspections. State inspection authority is limited to registered caregivers, dispensaries, testing, and manufacturing facilities. Such inspection is authorized on demand of the Department of Health and Human Services, but is disallowed in areas where marijuana-related activities are not taking place and, in the case of registered caregivers, when the caregiver is not present. Two or more absences on the part of the caregiver are grounds for state revocation of their certification.

Immunity. The pre-existing immunity for dispensary employees and directors is extended to registered caregivers and their employees as well as to hospitals and long-term care facilities and their directors, employees or agents.

Testing. Accredited third-party testing of medical marijuana is authorized.

Extraction and Concentration. The same language included in LD 238, authorizing the manufacture of medical marijuana products using non-hazardous extraction and concentration processes for all persons, subject to any forthcoming state rules, is included in this legislation as well. “Tier 1” processors authorized to possess up to 40 pounds of harvested marijuana, while “tier 2” processors are authorized to possess up to 200 pounds of harvested marijuana. The same is true for processing utilizing hazardous substances for extraction, provided the processors are certified as safe by a state-licensed professional engineer and have notified the state in advance of their intent to engage in marijuana extraction using inherently hazardous substances.