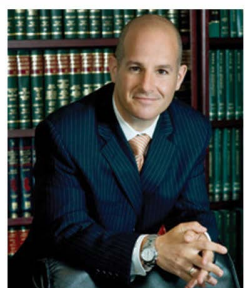


# How NY And NJ Medical Cannabis Regulations Are Evolving



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The wheels of government move slowly, but they do move. And nowhere is that more evident than in the gradual legalization of cannabis.

Two bellwether states, New York and New Jersey, have instituted marijuana programs permitting the sale of approved medical marijuana products to qualifying patients identified by a licensed medical professional, but are still aggressively limiting sales and distribution. Nonetheless, both also are also taking concrete steps towards expanding their marijuana programs.

## New York and the Legalization of Medical Marijuana

In July of 2014, New York officially legalized medicinal marijuana, making it the 23rd state at the time to join the movement of legalizing medically necessary cannabis. Following legalization, New York engaged in a lengthy 18-month regulatory drafting and application process, culminating in the first medical dispensaries opening their doors at the beginning of 2016.

At the outset, New York permitted five registered organizations (ROs) to operate four dispensaries and one manufacturing facility each, with locations dispersed throughout the state. By the end of 2016, more than 10,500 patients were certified to access the program.

In the two years since dispensaries opened their doors, New York has made numerous changes to the medical marijuana program which have increased access for patients. The first major change to the program occurred in March 2017, when the New York Department of Health (NYDOH) promulgated regulations adding "chronic pain" as a condition qualifying for medical marijuana treatment.

New York followed that up by adding PTSD as a qualifying condition in December 2017. Both of these changes served to increase the patient base for medical marijuana and move New York closer to parity with more expansive medical marijuana programs elsewhere in the country.

On Aug. 1, 2017, NYDOH, recognizing that the few allowable dispensaries were insufficient to meet the demand for medical cannabis, authorized five new ROs to manufacture and dispense medicinal marijuana, at four dispensaries and one manufacturing facility each. Although this will double the number of marijuana facilities within the state,

none of the new ROs have yet opened operational locations as of this date.

On Dec. 27, 2017, regulations proposed by NYDOH went into effect which represented a significant modernization of the fledgling program. First, the amendment to Section 1004.11(g) of the existing regulations greatly expanded the medical marijuana products offered for sale at dispensaries to now include capsules, chewable and effervescent tablets, lozenges, topical forms, transdermal patches and metered, nonsmokeable ground plant preparation.

Section 1004.12(f) was amended to permit more open access to dispensary facilities, now allowing, among others, prospective patients to visit treatment centers. Regulations were also promulgated to make it less onerous for qualified medical health care providers to become certified to prescribe medical marijuana, to loosen regulations on advertising materials for dispensaries and to permit dispensaries to sell approved, ancillary “health and wellbeing” products.

Indeed, New York's medical marijuana program has grown significantly since its inception, with more than 38,000 certified patients and 1,300 registered practitioners participating in the program as of the end of 2017. However, while the program continues to creep towards modernization, those figures still demonstrate there is insufficient utilization of the program considering the population of the state.

To that end, relief may be on the way, as Governor Andrew Cuomo proposed in January that New York should commission a study to determine the possible impact of legalization of recreational marijuana, a move that could signal the first step towards legalization of recreational cannabis in the state.

## New Jersey and the Legalization of Medical Marijuana

On Jan. 18, 2010, on his last day in office, New Jersey governor Jon Corzine signed into law the Compassionate Use Medical Marijuana Act (CUMMA) allowing patients with only a small number of qualifying conditions to access the medical marijuana program. Thereafter, the New Jersey Department of Health (NJDOH) promulgated regulations authorizing it to accept applications for a minimum of six alternative treatment centers (ATCs), with two each to operate in north, central and south New Jersey.

Notably, the first six permits for ATCs were awarded to nonprofit entities, with permits following the first six to be issued to either nonprofit or for-profit entities. Soon after passage, NJDOH quickly determined that only six ATCs, the statutory minimum, would initially be authorized pending an examination into the operations of these initial ATCs.

CUMMA permits ATCs to operate as both cultivation facilities and dispensaries under one permit. Moreover, upon the presentation of further proofs and completed applications, ATCs may also house manufacturing facilities for products such as syrups and lozenges. Therefore, much like New York, New Jersey concentrates its medical marijuana program through only a few organizations who have full control over the market through vertical integration.

With so few ATCs approved in New Jersey for dispensing and growing medical marijuana, the initial application process was highly competitive and extremely rigorous. Applications for permitting under the CUMMA involve a two-step process.

First, those seeking an ATC permit must submit an application seeking authority to apply for a permit to operate. Upon the granting of the application, the prospective ATC must then complete the application for actual permitting. Notably, applications for authority to apply for a permit may only be submitted following solicitation from NJDOH for such applications.

- To date, NJDOH has identified the following criteria which would be evaluated in any initial application: Mandatory organization information, which should include all corporate formation documents, articles of incorporation, charter, bylaws, certificates of good standing and any and all other documentation, governing such as operating agreements;
- Documented involvement of a New Jersey acute general hospital in the ATC's organization;
- Demonstrated ability to meet the "overall health needs" of qualifying patients;
- Demonstrated ability to protect the safety of the public;
- Community support and participation; and
- Ability to provide appropriate research data.

Considering the criteria which will be examined by NJDOH, it is critical that prospective applicants enter the process with:

- A well-established corporate structure populated by individuals capable of passing a criminal background check with fingerprinting;
- The appropriate medical partnerships;
- A detailed business plan which adequately addresses all phases of production from cultivation to dispensing, with an emphasis on establishing appropriate security procedures meeting DOH guidelines; and
- Representations that the municipality where the operations are located will be amenable to housing an ATC facility.

It is also imperative for all prospective applicants to ensure they have sufficient capital to demonstrate their ability to construct and operate a functional medical marijuana cultivation and dispensing facility.

Unlike New York, New Jersey has been slower to adopt changes to its medical marijuana program to expand care and access to patients within the state. On Sept. 14, 2016, New Jersey made the only major change to its program thus far, by including PTSD as a qualifying condition.

While this change was welcomed by PTSD patients requiring access to medical marijuana to treat their condition, New Jersey still permits only a very restricted list of conditions to qualify for access to medical marijuana, thereby ensuring a depressed patient base in comparison to the state's population.



Furthermore, with approximately 18,000 patients within the state already registered to obtain medical marijuana, and more and more registering every year, it is abundantly clear that the current five (soon to be six) ATCs are insufficient to meet the growing demand. This is particularly true in light of NJDOH accepting petitions requesting approval of additional medical conditions qualifying for medicinal marijuana treatment.

To date, at least 45 separate petitions have been submitted to the DOH for consideration for a variety of conditions, including chronic pain, lupus, fibromyalgia, chronic migraines, neuropathic pain and arthritis. On Oct. 25, 2017, the New Jersey Medicinal Marijuana Review Panel voted five to one to include Tourette's syndrome, anxiety, chronic pain related to musculoskeletal disorders, migraines and chronic pain of visceral origin as qualifying illnesses for medical marijuana treatment.

These conditions were approved on March 22, 2018, permitting patients with those conditions immediate access to medical marijuana program. The inclusion of more conditions for treatment is a necessary step forward in modernization of the program to fall in line with other state's medical marijuana programs.

Insufficient ATCs and a small pool of qualifying conditions are not the only concerns for New Jersey's current medical marijuana program. The cost of medicinal marijuana in New Jersey is high when compared to costs in many other states. While the cost of medicinal marijuana recently has decreased as a result of increasing competition among the still-opening six original ATC facilities, a decision to expand the issuance of additional licenses to promote competition will further reduce the cost of medical marijuana, benefiting those low-income individuals in need of appropriate medical treatment (to date, nearly half of all medical marijuana program participants qualify for low-income registration).

New Jersey's cannabis landscape could shift dramatically in the coming year, as there are multiple bills pending in the legislature which could reshape the industry moving forward. In May 2017, state senator Nicholas Scutari introduced legislation to legalize recreational marijuana. The Scutari legislation would permit five types of cannabis licenses: dispensaries, cultivation, manufacturing, wholesaling and transportation, thus doing away with the currently mandatory vertical integration.

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