Township Law E-Letter

The New Law On Commercial Medical Marihuana Facilities

After years of uncertainty about the voter-initiated Medical Marihuana Act, last month the legislature took a big step toward clarification in the Medical Marihuana Facilities Licensing Act (“MMFLA”). The MMFLA allows commercial medical marihuana facilities for the first time, but licenses and taxes them. The new law permits townships to choose whether they want commercial medical marihuana businesses within their borders, and gives townships the right to adopt ordinances, levy regulatory fees and receive a share of the taxes. The new businesses cannot apply for licenses for more than a year, but you can expect to hear much from them in the coming weeks.

2008 Medical Marihuana Act

Unlike a few western states (and a few more that will be voting on the question next week), Michigan does not recognize or permit the recreational use of marijuana. But since the voter-initiated Medical Marihuana Act in 2008, our state has allowed patients with state-approved cards to use medical marihuana (the same thing as “marijuana,” just a different spelling) supplied by registered caregivers. Last year alone, the state issued more than 216,000 of these cards (valid for a year), with the vast majority of patients (93%) qualifying to use medical marihuana based on “severe and chronic pain.”

The 2008 voter-initiated law was poorly drafted, and left a lot of things pretty vague. The courts eventually interpreted that law to limit each caregiver to only 5 patients and 12 marihuana plants per patient. Commercial growing, sale and transportation of more than that limited amount of marihuana was not protected by the law. Most of the “dispensaries” that sprung up while the law was still unclear eventually closed down (but some still remain open in defiance of the state law).

Although the 2008 law did not allow commercial medical marihuana facilities, it did grant certain rights to patients and caregivers who serve up to 5 patients. Those provisions remain essentially unchanged. Patients can still grow their own marihuana (up to 15 plants) and each caregiver can still grow and provide marihuana for up to five patients. Thus, there may still be a need to maintain whatever regulations your township has implemented to address these previously-authorized activities.

New MMFLA

A number of legislators and many stakeholders saw a need to better clarify the terms of the 2008 Medical Marihuana Act. The 2008 law lacked suitable provisions for the taxing and regulation of medical marihuana. After months of lobbying and re-writing, the Michigan legislature finally adopted the MMFLA last month, giving recognition to the future establishment of commercial medical marihuana businesses, but also allowing local determination about whether to allow such businesses, and making the new businesses subject to a new sales tax, state licensing and local regulation funded by reasonable annual regulatory fees. This new Michigan law has set in motion a process that will cause increasing interest in commercial medical marihuana facilities over the next 14 months and beyond.

The new law expressly authorizes the following kinds of commercial medical marihuana facilities: medical marihuana growers (up to 1500 plants), processors, provisioning centers (formerly known as “dispensaries”), secure transporters and safety compliance facilities. Each of these will be licensed by the state, and will have to
renew their licenses annually. But none of them can even apply for a state license until **December 15, 2017**, at the earliest. Before that can happen, the state still needs to adopt administrative rules required by the new law.

You can expect to hear and see a lot about commercial medical marihuana facilities in the coming weeks and months, but nobody can say anything definitive about what can or should be done until after the state answers a lot of currently unknown questions in the rules that will be adopted in late 2017. Anyone making definite pronouncements now is simply guessing.

But with the amount of money to be made by commercial marihuana growers and vendors, and the hype emanating from their attorneys, we predict you will receive increasingly frequent and possibly frenzied communications from various parties vying for these new commercial business opportunities. There will be lots more to come on this.

**Your Township’s Role**
The Township will have a chance to say “yes” or “no” to any commercial medical marihuana facilities within your borders. You can limit which types of facilities will be allowed in your Township (growers, processors, provisioning centers, etc.) and you can limit the number of each type you will allow in your Township.

Your choice controls, whether you have your own zoning ordinance or not. The county cannot preempt your decision to prohibit these new businesses. If you rely on your county for zoning, the county will control where these facilities can be located, but not whether you will have any or how many you will have in your Township.

If you say no, that’s final. They must go somewhere else. But that might be to an adjoining township that wants to allow them, even if it is right on your border! This is somewhat reminiscent of the “old days” of “dry” municipalities that chose to prohibit establishments serving liquor, only to have those businesses spring up right outside their borders.

The new law offers a couple of “carrots” to townships that choose to allow these new commercial medical marihuana facilities. These townships can charge the new licensees a fee up to $5,000 annually for local oversight and regulation. These townships will also get a share of the new sales taxes generated by the commercial medical marihuana facilities.

**Some Remaining Uncertainties**
There are still many unanswered questions under the MMLFA. Although townships will get some say in how these businesses are run (within the limits of the state law and forthcoming rules), it is not clear what degree of control townships will have if they allow these businesses. Some of the open questions are discussed below.

- Do townships just say “yes” or “no,” and limit the number of facilities, allowing the state to decide which applicants get to participate?
- Will townships be allowed to independently review each license applicant?
- What will happen to the current businesses questionably operating under current law?
- What costs will townships incur in the administration and enforcement of the new law and in supervising the new businesses?
- What additional costs will come with the criminal law enforcement associated with these new businesses, such as illicit drug sales, theft, armed robbery and violent crime?
• If your Township contracts with the county sheriff for law enforcement, will there be increased contract costs when you choose to allow commercial medical marihuana facilities?
• What will the state rules allow? Much needs to be done at the state level to implement the MMFLA. The state rules are not yet in place; they will not be ready for implementation until well into 2017; and no applications can be received until December 15, 2017.

In the meantime, townships will have to carefully consider whether they want to be “players” in this new industry. Our law firm is currently working with a group of townships to better understand these uncertainties and to plan how to manage the anticipated risks and uncertainties, as well as the opportunities. Please contact us if you are interested in participating in this ongoing project.

-- Bill Fahey

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