



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
MARGARET M. O'NEILL BUILDING
410 FEDERAL STREET, SUITE 1
DOVER, DE 19901

VOICE: (302) 739-3620
TTY/TDD: (302) 739-3699
FAX: (302) 739-6704

MEMORANDUM

DATE: October 25, 2013

TO: Ms. Deborah Harvey
Division of Public Health

FROM: Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: 17 DE Reg. 405 [DPH Proposed Medical Marijuana Program Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Public Health's (DPH's) proposal to adopt a regulation governing the State of Delaware Medical Marijuana Act. The proposed regulation was published as 17 DE Reg. 405 in the October 1, 2013 issue of the Register of Regulations.

As background, legislation (S.B. 17) was enacted in 2011 to authorize the establishment of a medical marijuana program in Delaware. SCPD commented on an initial set of implementing regulations in April 2012 which covered eligibility, registration cards, etc. Although final regulations were adopted in June 2012, the State placed the actual growing and distribution of marijuana "on hold" when the federal Justice Department warned that State employees involved in the processing and distribution of marijuana could be prosecuted under federal drug laws. There are now at least nineteen (19) states with medical marijuana laws enacted and the Governor issued a letter to legislators in September, 2013 indicating that the administration has reassessed the legal landscape and plans to move forward to have the Delaware program operational in 2014.

DPH has now formally issued a proposed regulation to address the operation of "compassion centers" which would actually grow and distribute marijuana. There are many safeguards, including constant video surveillance, alarms, random inspections, personnel background checks, and audits. A facility could only cultivate a maximum of 150 plants and maintain a stockpile of less than 1,500 ounces. A compassion center must operate on a "not-for-profit" basis. See §7.0. The State plans to only initially authorize the establishment of a single compassion center which the DHSS website characterizes as a "pilot". Another curtailment in the program is elimination of an authorization for a "visiting qualifying patient" with an out-of-state medical marijuana

identification card obtaining marijuana in Delaware. See §2.0, definition of “visiting qualifying patient”. An RFP will be issued and the successful applicant will be authorized to begin growing medical marijuana on July 1, 2014.

SCPD endorses the proposed regulation subject to the Division’s consideration of the following technical observations.

First, in §5.3.7, there is a plural pronoun (“their”) with a singular antecedent (“patient”). SCPD recommends substitution of “the patient’s” for “their”.

Second, the compassion center and each growing site are required to comply with local zoning standards. See §§7.6.3.1.1, 7.8.2, and 7.93.11. This could prove somewhat problematic since local zoning codes may not address an entity such as a compassion center. The Division may wish to reconsider this aspect of the standards.

Third, §7.10.3 recites as follows:

7.10.3. Suspension: The Department will suspend a registration certificate authorizing the operation of a compassion center, with or without notice, for any violation of an applicable law or regulation.

Literally, this is a rather “brittle” standard. If there is a single, minor violation of a regulation, the Department would have no choice but to “suspend” the registration. There may be instances in which the Department would prefer to simply accept a remedial plan or prompt correction of non-compliance. SCPD recommends substituting “may” for “shall” so the Department has some flexibility in its response to identification of a violation of a law or regulation.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our position or observations on the proposed regulation.

cc: Dr. Karyl Rattay
Mr. Brian Hartman, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

17reg405 dph-med marijuana 10-25-13