Passage of the New Jersey compassionate use Medical Marijuana Act raises questions for physicians

Legal Alert

March 1, 2010

On January 18, 2010, former Governor Corzine signed the New Jersey Compassionate Use Medical Marijuana Act (the "Act"). The Act is expected to take effect in July. The purpose of the Act is to decriminalize the possession and use of marijuana by patients who use marijuana to alleviate suffering from certain debilitating medical conditions ("medical marijuana"). Patients who obtain a prescription for medical marijuana from their primary care physician may possess up to two ounces of medical marijuana without being subject to criminal penalties. The Act protects physicians from civil and administrative penalties related to the use of medical marijuana as authorized under the Act, and provides that physicians should not be denied any right or privilege, or subject to any disciplinary action by a professional licensing board, due to such use.

WHO MAY PRESCRIBE MEDICAL MARIJUANA?

Physicians covered by the Act are those who are licensed and in good standing to practice medicine and surgery in New Jersey. A physician who has a bona fide physician-patient relationship with a patient, and who is the primary care physician, hospice physician, or physician responsible for the ongoing treatment of a patient's debilitating medical condition (as defined below), may prescribe medical marijuana to a patient with a debilitating medical condition. In order to be a bona fide physician-patient relationship, the relationship between a physician and a patient must be one in which the physician has an ongoing responsibility for the assessment, care and treatment of a patient's debilitating medical condition. The ongoing treatment cannot be limited to the provision of authorization for a patient to use medical marijuana, or consultation solely for that purpose.

WHAT PATIENTS MAY OBTAIN MEDICAL MARIJUANA?

Patients covered by the Act are those New Jersey residents with debilitating medical conditions. The following conditions, if resistant to conventional medical therapy, are included in the definition of debilitating medical condition under the Act:

- Seizure disorder, including epilepsy;
- Intractable skeletal muscular spasticity; or
- Glaucoma.

The following conditions, if severe or chronic pain, severe nausea or vomiting, cachexia or wasting syndrome results from the condition or treatment, are included in the definition of debilitating medical condition under the Act:

- Positive status for HIV;
- AIDS; or
- Cancer.

The following conditions are also included in the definition of debilitating medical condition under the Act:

- Amyotrophic lateral sclerosis;
- Multiple sclerosis;
- Terminal cancer;
- Muscular dystrophy;
- Inflammatory bowel disease, including Crohn's Disease;
- Terminal illness, if the physician has determined a prognosis of less than 12 months of life; or
- Any other medical condition or its treatment that is approved by the Department of Health and Senior Services.

A physician can prescribe medical marijuana to a minor if the minor's custodial parent, guardian or the person with legal custody of the minor consents in writing to the medical use of marijuana and agrees to control the acquisition and possession of the marijuana and paraphernalia.

HOW IS MEDICAL MARIJUANA PRESCRIBED AND REGULATED?

In order to prescribe medical marijuana, a physician must provide the patient with a certification authorizing the use of medical marijuana. Additionally, a physician must provide the patient with written instructions regarding the total amount of usable marijuana (in weight) that can be dispensed to the patient in a 30-day period. A physician may provide the patient with multiple written instructions at one time, authorizing the patient to receive a total of up to a 90-day supply of medical marijuana, if certain conditions are met. The patient can obtain medical marijuana by providing the certification and instructions, along with other materials, to an alternative treatment center, which is the entity authorized by New Jersey to provide medical marijuana and related paraphernalia. A physician may also provide an electronic copy of the written instructions directly to an alternative treatment center on behalf of a patient.

Any physician who provides a certification or written instructions to a patient must provide certain information to the Director of the Division of Consumer Affairs in the Department of Law and Public Safety (the "Director"). The Director will maintain a system that monitors the dispensation of medical marijuana. Any patient who desires to obtain medical marijuana must apply for a registry card from the Department of Law and Public Safety. Applying for or receiving a registry card will not constitute a waiver of the patient's physician-patient privilege.

WILL HEALTH INSURANCE PROVIDERS PAY FOR MEDICAL MARIJUANA?

The Act provides that government medical assistance programs and private health insurers will not be required to reimburse patients for costs associated with medical marijuana.

If you would like more information about the Act discussed in this alert, please contact a member of the Health Care Law Practice Group at Flaster Greenberg PC.

ATTORNEYS MENTIONED

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