

HOSPITALITY INFORMATION MEMO

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New York Proposes Revised Rules for the Personal Cultivation of Medical Cannabis

On June 8, 2022, the New York Office of Cannabis Management (OCM), pursuant to its authority under the New York Cannabis Law, proposed additions to Title 9 of the New York Codes, Rules and Regulations that would regulate the home cultivation of cannabis for certified medical cannabis patients (the Proposed Regulations). The proposed legislation seeks to advance patient access to cannabis while also delineating minimum safety standards for such access. Interested parties may submit comments on the Proposed Regulations until July 23, 2022, after which they will become effective upon publication of a Notice of Adoption in the State Register.

The Proposed Regulations apply only to certified medical patients, not to the general public. The OCM will be issuing regulations relating to the personal cultivation of cannabis for regular consumers no later than 18 months after the first authorized retail sale of cannabis. Thereafter, persons over 21 will be eligible to: (i) store up to five pounds of cannabis at their private residences; and (ii) grow up to three mature and three immature cannabis plants at a time.

The Proposed Regulations permit certified patients, or their designated caregiver if the patient is under 21 or whose physical or cognitive impairments prevent them from cultivating cannabis, to cultivate cannabis at a secure location at or on the grounds of a certified patient's private residence—which includes any “structure designed and occupied for residential purposes.” Landlords will not be able to refuse to lease or otherwise penalize a certified patient or designated caregiver for the activities permitted by the Proposed Regulations unless: (i) the landlord would lose a federal benefit as a result; or (ii) if the property has a no smoking policy, provided that it may only prohibit the smoking of non-medical cannabis.

Certified patients or their caregivers are not allowed to sell any cannabis products but may transfer certain quantities of cannabis to other certified patients or designated caregivers so long as the transfer is done without compensation. Additionally, designated caregivers would be prohibited from receiving compensation from certified patients beyond the actual costs of the products, materials and utilities.

The Proposed Regulations also limit the quantity of plants that certified patients or their designated caregivers may cultivate at a time. Certified patients or caregivers may not cultivate more than three mature and three immature cannabis plants at a time and may not cultivate more than six mature and six immature cannabis plants at the same residence (i.e., when a designated caregiver cultivates on behalf of two certified patients). The Proposed Regulations define “mature” cannabis plants as those that have flowered and whose buds may be “observed by visual examination,” and defines “immature” cannabis plants as those that are non-flowering and either do not have buds or whose buds cannot be observed.

The Proposed Regulations impose a duty on patients to take reasonable measures to ensure that cannabis plants are not readily accessible to anyone under 21. Such measures include locking and storing the cannabis in such a way to prevent theft or loss; conducting cultivation activities out of public sight and keeping cannabis of different patients stored separately.

The Proposed Regulations also include minimum standards for the transport, sale, storage and related recordkeeping and reporting related to medical cannabis plants and seeds sold by registered organizations for personal home cultivation. Notably, before selling cannabis to certified patients, registered organizations must have complied with the requirements of Article 3 of the Cannabis Law, which includes contracting with an independent laboratory to conduct testing; retain copies of registry identification cards shown by certified patients; provide safety inserts with every sale; provide quality control findings of its cannabis to the OCM; and comply with registration and reporting requirements. Further, all sales must be conducted through the organization's dispensary or via direct delivery service.

It is evident that, following New York's legalization of recreational marijuana and the proposition of regulations for retail dispensary licenses, the State is prioritizing its 'budding' marijuana industry. With that comes greater regulation, and the need for experienced attorneys who know how to navigate the ever-changing cannabis regulatory landscape.

For questions about the information provided above or about the cannabis industry in general, please contact [Jeffrey B. Scheer](#), [Dustin M. Dorsino](#) or the Bond attorney with which you are regularly in contact.

