

# MEDICAL MARIJUANA IN MASSACHUSETTS

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## Medical Marijuana Treatment Centers (Act) or Registered Marijuana Dispensary (Regs.) Defined as:

A not-for-profit entity, as defined by Massachusetts law only, registered under this law, that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies or educational materials to qualifying patients or their personal caregivers.

# The Act: RMDs

- On Nov. 6, 2012 the use of Medical Marijuana was approved by the voters of MA
- Regulations adopted in May, 2013
- Department of Public Health is authorized to issue up to 35 registrations for nonprofit RMDs
- There must be 1 RMD per county
- No more than 5 RMDs in 1 county
- More than 35 registrations may be permitted in future years if DPH determines 35 is insufficient to meet needs

# The Act: Hardship Cultivation

- If a “qualifying patient’s” access to a RMD is limited by:
  - Verified financial hardship
  - A physical incapacity to access reasonable transportation
  - Lack of a treatment center within a reasonable distance of the patient’s residence
- Patient or Personal Caregiver will be registered by DPH to grow equivalent of 60 day supply (10 ozs or otherwise)

# DPH REGULATIONS

- Approved by the Public Health Council May 8, 2013 after public comment period
  - Went into effect May 28, 2013
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# DPH REGULATIONS:

## RMD Application Phase II

- **Phase I – DPH received 181 applications-Aug.22, 2013**
- **Phase II – DPH has qualified 158 applications to proceed to phase II. 18 applicants are qualified for Essex County**
- **Application: further information required, such as:**
  - **County city or town in which the proposed RMD would be sited, and if known, the physical address of the proposed RMD**
  - **Demonstration of property interest in subject property (legal title, option to purchase, lease, legally enforceable agreement to lease conditioned on registration, or other binding permission to use premises)**
  - **Demonstration of ADA compliance**
  - **Demonstration of compliance with local codes/ordinances/bylaws for dispensing and cultivation property + demonstration of support or non-opposition furnished by local municipality**

# DPH REGULATIONS:

## RMD Application Phase II

- Proposed timeline for achieving operation of the RMD and evidence that the RMD will be ready to operate within said timeline
- Info re: owners, officers, board members, employees, owners of property interest in subject property, creditors
- **Detailed floor plan of dispensing location and (if applicable) cultivation location**
- Business plan, operation plan, list of products
- Operational plan for cultivation
- Analysis of projected patient population needs in service area
- Demonstration of suitability to run an RMD

# DPH REGULATIONS: RMD Application Phase II

## Action on Phase II submissions

- **DPH may conduct a site visit**
- **Phase II applications will be scored by selection committee and for purposes of ranking DPH may take into account:**
  - **geographical distribution of RMDs (convenience for residents, avoidance of clustering of RMDs)**
  - **local support for application**
  - **presence of home delivery system and other methods to ensure patient access**



## DPH REGULATIONS :RMD Siting

- **If no local requirements exist, a RMD shall not be sited within a radius of five hundred feet of a school, daycare center, or any facility in which children commonly congregate.**
- 500 foot distance is measured in a straight line from the nearest point of the facility in question to the nearest point of the proposed RMD.

# DPH REGULATIONS: RMD Operations

**LENGTHY** list of operation requirements are set forth in 105 CMR 725.105, including:

- **Security measures that comply with DPH Regulations**
- Storage of marijuana that complies with DPH Regulations
- Accurate record-keeping/inventory protocols: Seed to Sale tracking
- Cultivation requirements
- Quality Control/Testing
- Plan for confidential information handling
- Price lists: market rate & hardship rate
- Patient education
- Non-organic pesticide ban
- Soil must comply with U.S. Agency for Toxic Substances and Disease Registry's Environmental Media Evaluation Guidelines for residential soil levels

# DPH REGULATIONS: RMD Operations

- All marijuana must be processed in a safe and sanitary manner according to DPH regs
- Diversion avoidance measures
- Marijuana-infused products must be prepared in compliance with DPH regulations
  - Are not considered “FOOD” for the purposes of regulation
- **Waste Disposal in compliance with applicable state and local statutes, bylaws, ordinances**

## DPH REGULATIONS: RMD Operations

- Dispensing requirements (must produce registration card & ID)
- Interpreter must be made available
- Option to refuse service
- Dispensary agents must receive DPH training
- Record-keeping: RMD records must be available for inspection by DPH (no provision for inspection by local law enforcement)

# DPH REGULATIONS: RMD Operations

## Marketing

- **Product Packaging & Labeling requirements**
  - MIPs shall not bear a reasonable resemblance to commercially available candy
  - Prohibition against using medical symbols, images of marijuana, related paraphernalia or slang
- **Limits on external signage**
  - **May only be illuminated 30 mins before sundown until closing**
  - **Neon signage prohibited**
  - **May not display advertisements for marijuana or brand name**
- **Limits on advertising materials re: content**

# DPH REGULATIONS: RMD Operations

## Prohibitions

- RMD may not sell any products other than MJ and products that facilitate the use of MJ for medical purposes
- Prohibition against acquiring MJ except through own cultivation
- Prohibition against MJ distribution for non-med purposes
- Prohibition against giveaways of samples
- Prohibition against sale by internet or mail order
- Consumption of MJ on the RMD premises is prohibited BUT RMDs may administer MJ for the purposes of teaching use of vaporizers, or demonstration of use of other products as necessary
- RMDs must have liability insurance coverage or maintain an escrow account

# DPH REGULATIONS: RMD Operations Security

- DPH representatives and emergency responders in the course of responding to an emergency shall have access to a RMD or RMD vehicle
- This regulation does not prohibit access to authorized law enforcement personnel or local public health, inspectional services, or other permit-granting agents acting within their lawful jurisdiction

# DPH REGULATIONS: RMD Operations

## Security

- RMDs must implement sufficient security measures to deter and prevent unauthorized entrance
- Limit access to RMDs
- Prevent people lingering in area
- Comply with disposal protocol for excess inventory
- Establish limited access areas
- Locked storage of product
- **Outside perimeter must be sufficiently lit to facilitate surveillance**
- **Ensure that trees, bushes and other foliage outside RMD does not allow person(s) to conceal themselves from sight**
- Develop emergency protocol
- **Comply with all local requirements regarding siting**
- Security Alarm Systems required, including duress alarm/panic alarm/ hold-up alarm connected to local law enforcement



**What should Saugus  
do to plan for  
Registered Marijuana  
Dispensaries?**

# Study It

- A temporary moratorium prohibits the use of land or structures for RMDs for a defined period of time.
- Municipalities must establish a rational basis for the moratoria (e.g., impact on local law enforcement and public safety needs).
- Duration of the moratorium must have a rational relationship to the proposed planning process.

# Study It

- Use the time to undertake a study of the secondary effects of medical marijuana related uses.
- Take the necessary steps to develop and present a proposed bylaw or ordinance to the legislative body to address the issues identified in the study.

# Saugus Moratorium

- Current zoning does not allow RMD
- 105 CMR 725 provides guidance to communities regulating RMD at the local level
- Town needs time to study and interpret regulations and know how to apply them to unique circumstances of Saugus
- New type of land use that will require oversight and regulation
- Local impacts need to be understood and studied including legal, land use, public safety, and public health
- Potential impacts need to be evaluated and addressed in a comprehensive manner in the Saugus zoning by-law prior to the permitting of a RMD

# Saugus Moratorium

- Saugus needs to undertake a planning process to consider amending the zoning by-law regarding regulation of RMD and other uses related to the regulation of medical marijuana
- The zoning amendment proposes to put in place a temporary moratorium of finite duration on the use of land and structures for RMD so as to allow the Town sufficient time to engage in a careful study and planning process to address the potential impacts on structures and uses in the Town and to enact a by-law that is not in conflict with the state regulation and is consistent with sound land use and planning goals and objectives.
- Moratorium would be effective to September 30<sup>th</sup> 2014.

# Moratorium Upheld by the AG!

- On 3/13/13, the Attorney General approved the bylaw adopted by the Town of Burlington establishing a temporary moratorium, ending on June 30, 2014, on the use of land or structures for RMDs.
- In approving the bylaw, the Attorney General found the approximately 18-month moratorium was a reasonable exercise of the Town's zoning power because it allowed the Town to manage a new use and take time for study, reflection and decision on a complex subject matter.

# AG Puts Limits On Moratoria

- On September 12, 2013, the AG ruled that a two-year ban (lasting through June 30, 2015) was not supported by legitimate zoning objective.
- The AG commented that a moratorium through December 30, 2014 could be interpreted as a reasonable amount of time to pursue the planning of medical marijuana regulation.

# AG Rules Against Bans

- The Attorney General disapproved the Wakefield bylaw banning RMDs outright.
- In disapproving this bylaw, the Attorney General determined such a ban would frustrate the Act's purpose and therefore conflict with state law.



# AG RULES AGAINST BANS

- The Attorney General noted the Act requires the DPH to register up to 35 RMD, with 1 center in each county and no more than 5 centers per county.
- The DPH is also authorized to register more centers if it determines that 35 are insufficient to meet demand.
- The Act provides “hardship” cultivation registration, allowing qualifying patients unable to access medical marijuana treatment centers due to financial, physical or transportation issues, to cultivate their own marijuana in an enclosed, locked facility.

# AG Rules Against Bans

The Attorney General viewed these provisions collectively and determined the Act's purpose is to ensure reasonable access to RMDs, which centers must be dispersed throughout the Commonwealth.

The Attorney General further ruled a municipal ban on RMDs would undermine this purpose. In other words, if one municipality could ban the treatment centers, they all could.

# AG Rules Against Bans

The Attorney General's disapproval of Wakefield's express prohibition of RMDs suggests that existing bylaws or ordinances that have the same effect may also be vulnerable to challenge.

For that reason, municipalities may consider reviewing their bylaws or ordinances for consistency with state law.

# How do you regulate medical marijuana?

- ZONING BYLAWS
  - Add medical marijuana uses to your existing use regulations
  - Add Overlay District
  - ★ Be mindful of possible protection under G.L. c.40A §3 ¶1 If the operation can qualify as an agricultural use
- GENERAL BYLAWS
- BOARD OF HEALTH REGULATIONS

## WATCH FOR POTENTIAL CONFLICTS WITH STATE LAW

When exercising a right to govern locally, a town "exceeds its power only when it passes a by-law inconsistent with the Constitution or laws of the Commonwealth."

## WATCH FOR CONFLICTS WITH STATE LAW

A by-law may be deemed inconsistent with state law where:

- (1) it is in sharp conflict with it;
- (2) state law evinces an intent to preclude local action;
- (3) the purpose of the state law cannot be achieved in the face of the local bylaw; or
- (4) intent to preclude local action is not express, but can be inferred by the comprehensive manner in which the Legislature has regulated the subject.

# PROCEDURES

## ZONING

- Follow the process set forth in G.L. c.40A §5
  - Planning Board Public Hearing
  - Report & Recommendation
  - Town Meeting : 2/3 vote

## BOARD OF HEALTH

- Regulations can be adopted at a regular meeting after a summary of the substance of any regulation is published once in a newspaper of general circulation in the city or town. G.L. c.111 §31.