

## **Highlights of HB 11-1043 Concerning the Regulation of Medical Marijuana**

HB 11-1043 was the major medical marijuana “clean-up” bill adopted by the Colorado General Assembly this year. The bill produced numerous changes to the state’s original medical marijuana licensing law, HB 10-1284. The following changes may be of greatest interest to local governments.

A. ***Relaxation of July 1, 2011 deadline for licensing.*** The original law would have required pre-existing MMJ businesses to have new state and local licenses in hand by July 1 of this year to remain legal. The new law says these businesses can remain legal even if they have not received their new state and local licenses yet, as long as they met the original August 1, 2010 deadline for commencing the license application process. § 12-43.3-103 (2)(c), C.R.S.

B. ***Full compliance with state operating rules effective July 1, 2011.*** Even though pre-existing MMJ businesses may not yet have state and local licenses in hand, they are supposed to conduct their businesses effective July 1 in full compliance with the state licensing statute and associated rules. § 12-43.3-103 (2)(c), C.R.S.

C. ***Extended statewide “moratorium” on start-up MMJ businesses.*** Local and state licensing authorities cannot begin to accept new license applications for new MMJ businesses until July 1, 2012, one year later than originally projected. § 12-43.3-103 (2)(d)(I).

D. ***Extension of local moratoriums on licensing.*** Local governments are allowed to extend their moratoriums on MMJ businesses until July 1, 2012, thus in effect giving each jurisdiction additional time to decide whether to opt in or opt out of the state licensing program. If a local government has not affirmatively opted-out by that date, then the default rule is that the jurisdiction will be deemed open for licensing. §§ 12-43.3-202 (1)(b)(I) and 12-43.3.-301 (2)(a), C.R.S.

E. ***“Changes” to original license applications.*** Preexisting MMJ businesses that obtain licenses prior to July 1, 2012 will immediately be allowed to apply for “changes” to their licenses, e.g. change of ownership. § 12-43.3-103 (2)(d)(II).

F. ***Relocation from jurisdictions that have imposed bans.*** Preexisting MMJ businesses located in jurisdictions that have opted out of MMJ licensing may apply for licensing in other jurisdictions prior to July 1, 2012. § 12-43.3-103 (2)(d)(III), C.R.S..

G. ***Clarification on taxability of MMJ sales.*** Medical marijuana is not a type of non-prescription drug, and therefore is fully subject to sales taxation under state law. § 12-43.3-104 (7), C.R.S.

H. ***Cultivation locations no longer confidential.*** This year’s amendments stripped out provisions of the original law (§ 12-43.3-310, C.R.S.) that made the location

of optional premises cultivation licenses confidential. Indeed, now the premises that are proposed to be licensed for MMJ cultivation must be publicly posted before a license can be issued. § 12-43.3-302, C.R.S.

I. ***New provisions for access to criminal background information by local licensing authority.*** Local governments now have clear authority to access criminal records and consider this information in making local licensing decisions. § 12-43.3-307 (2)(a) and (c).

J. ***Co-location of multiple cultivators in one location.*** It is now clear that multiple optional premises cultivation licenses can be located under one roof in a common facility. The original law was ambiguous on this point. § 12-43.3-403 (2).

K. ***Preemption of local government authority to regulate labeling.*** Although the Colorado Medical Marijuana Code broadly grants local governments the ability to adopt additional or stricter licensing regulations, this year the law was amended to preclude local regulation of the labeling of infused products. Now, this is the one and only provision of the entire statute declared to be “a matter of statewide concern.” § 12-43.3-404 (5), C.R.S.

L. ***New plant limits for manufacturers.*** This year’s amendments closed a major loophole in the original law by placing a cap (presumptively 500 plants) on the size of a manufacturer’s optional premises cultivation operation. § 12-43.3-404 (9).

M. ***Seizure and disposition of MMJ.*** This year’s amendment gave much clearer authority to local licensing authorities and law enforcement to seize and destroy marijuana in the event of violations of the licensing law. § 12-43.3-602, C.R.S. In effect, these provisions mean that the provisions of Amendment 20 requiring law enforcement to “preserve” marijuana seized from patients and caregivers do not apply to the commercial MMJ industry.

N. ***Registration of care-giver cultivation sites.*** People who cultivate MMJ as a “primary care-giver” will now be required to register their location with the CDPHE. While local governments and the public will not have access to the entire list, local governments will at least be able to make an “address-specific request for verification” that a particular location is on the list. § 25-1.5-106, C.R.S.

O. ***New sanctions for breaching patient confidentiality.*** The criminal code was amended to create a new misdemeanor associated with actions that violated MMJ patient confidentiality as guaranteed by Amendment 20. Persons who work for local licensing authorities and law enforcement are specifically mentioned in the law as being potentially liable for violations. § 18-18-406.3, C.R.S.

***Prepared by David W. Broadwell, City Attorney, June 9, 2011***