Model State Medical Marijuana Law

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Some Thoughts and Observations:

1. Be prepared for an ongoing learning curve, politics, and controversy.
2. Remember marijuana is still a basis for a federal crime. Does federal law always preempt a state medical marijuana law?
3. Should you fly under or into the federal radar? Review federal guidance on what your United States Attorney(s) will use the limited resources to prosecute: June 2011 Memorandum from James Cole and the October 2009 Memorandum from David Ogden (both Deputy Attorney Generals at U.S. Department of Justice) regarding marijuana for medical use. Did you get a letter from your United States Attorney(s)? Do you contact your United States Attorneys(s) if you did not receive a letter? How does one determine how much marijuana the state medical marijuana can provide without triggering a federal prosecution? Should the state tempt federal prosecution to help patients?
4. Remember it is a medical marijuana program, not a recreational use program. What serious conditions qualify a patient for medical marijuana? Who will regulate and how? How much marijuana? What product type(s)? What marketing? Where dispensed? Where used? Which medical providers can recommend medical marijuana and in what quantity?
5. Which model: Cultivation centers with dispensaries versus home cultivation. Other?
6. Selection considerations:
   a. Criteria for applicants to present: operations plan, security plan, etc.
   b. Open/ongoing or limited rounds of applications?
   c. Notice to the neighborhood/public. NIMBYs?
   d. Who makes the selections? Who makes recommendations? Who participates in the process? How does scoring work?
   e. Zoning and distances from schools, parks, playgrounds, drug-free zones, etc.
   f. How do appeals work? Which body? De novo or on the record review?
7. State documents, funding, and other issues to make a model law work:
   a. What provisions where? Statutes, regulations, forms, and applications
   b. Disclosure of federal position to interested parties?
   c. What documents are available via freedom of information/open government laws? Trade secrets, commercial information, financial information, and privacy issues.
   d. How to handle changes as the program develops? Washington Post editorial on 04/08/2012: “Will the DC Council regulate medical marijuana to death?”
   e. Impact on laws for anti-smoking, anti-drug, impaired driving, drug-free workplace, sensitive job, and similar safeguards
   f. Paying for medical marijuana: Insured patients, Medicaid patients, Medicare patients, and uninsured/underinsured patients. Price regulation or free market?
   g. Funding government regulation of the program? Fees, taxes, penalties, etc.
h. What existing state administrative procedures can be borrowed for a medical marijuana program?

8. Review what the federal authorities can do to stop medical marijuana without actually prosecuting a crime.

DC Resources:

1. Legalization of Marijuana for Medical Treatment Initiative of 1998 (related legislation in 1999), effective February 25, 2010 (D.C Law 13-315; D.C. Official Code §§ 7-1671.01 – 7-1671.13), as amended by:
   A. Legalization of Marijuana for Medical Treatment Amendment Act of 2010, effective July 27, 2010 (D.C. Law 18-210; D.C. Official Code §§ 7-1671.01 – 7-1671.13); and,

2. Medical marijuana regulations codified at Subtitle C of Title 25 of D.C. Municipal Regulations (available on LEXIS and Westlaw) and as may be amended via the electronic D.C. Register’s public website found at [http://www.dcregs.org/Default.aspx](http://www.dcregs.org/Default.aspx).


5. Decisions on appeals pending in (or to be filed) with adjudicative bodies.

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