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**Municipal Client Advisory
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**WHITHER MEDICAL MARIJUANA USE IN
MASSACHUSETTS**

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At the November 6, 2012 election, the voters in Massachusetts approved Ballot Question 3, which authorizes medical marijuana and related uses. Ballot Question 3, now codified as Chapter 369 of the Acts of 2012 (the Law), became effective on January 1, 2013. The purpose and intent of the Law is: "The citizens of Massachusetts intend that there should be no punishment under state law for qualifying patients, physicians and health care professionals, personal caregivers for patients, or medical marijuana treatment center agents for the medical use of marijuana, as defined in the Law."

In essence, the Law authorizes, under certain circumstances, the acquisition, cultivation, possession, processing, transfer, transportation, sale, distribution, dispensing, administration and use of marijuana for medical purposes. A medical marijuana treatment center must be registered by the Massachusetts Department of Public Health (the Department). In addition, the Department may register the cultivation of marijuana for medical use by a medical marijuana treatment center, a qualified patient, or a qualifying patient's personal caregiver.

Any person who meets the requirements under the Law shall not be penalized under Massachusetts law, or denied any right of privilege for such actions. The Law, however, does not trump federal law regarding the use of marijuana. Marijuana remains a Class I substance under the federal Controlled Substances Act. Therefore, it remains illegal under federal Law to cultivate, possess, use, or sell marijuana, even for medical purposes.

A. Department of Public Health Regulations

Implementation of the Law is dependent upon issuance of regulations by the Department, which must be issued by May 1, 2013. Those regulations shall:

1. Address how to implement four (4) sections of the Law:
 - a. Registration of nonprofit medical marijuana treatment centers (Section 9 of the Law);

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- b. Registration of medical treatment center dispensary agents (Section 10 of the Law);
 - c. Cultivation registrations issued to a qualified patient or personal caregiver to cultivate up to a sixty (60) day supply of marijuana for medical use, or to a medical marijuana treatment center for growing marijuana for medical use (Section 11 of the Law); and
 - d. Medical marijuana registration cards for qualifying patients and designated caregivers (Section 12 of the Law).
2. Define the quantity of marijuana that reasonably could be presumed to be a sixty (60) day supply for qualifying patients, based upon the best available evidence. This presumption as to quantity may be overcome with evidence of a particular qualifying patient's medical use.

B. What Does the Law Mean Now?

What can be done before the Department issues regulations?

1. Written certification by a physician shall constitute a medical marijuana registration card for a qualifying patient.
2. A certified mail return receipt showing compliance with the application requirements, and a photocopy of the application, shall constitute a medical marijuana registration card for that qualifying patient's personal caregiver.
3. The written recommendation of a qualifying patient's physician shall constitute a limited cultivation registration, which allows the qualifying patient or that patient's personal caregiver to cultivate a limited number of plants, sufficient to maintain a sixty (60) day supply of marijuana. The Department has until May 1, 2013 to issue regulations that define a sixty (60) day supply.

What cannot be done until the Department issues regulations?

1. The Department may not issue a registration to a nonprofit medical marijuana treatment center.



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2. A nonprofit medical marijuana treatment center may not acquire, possess, process, transfer, transport, sell, distribute, dispense or administer marijuana for medical use.
3. The Department may not issue to a nonprofit medical marijuana treatment center, to a qualifying patient, or to a personal caregiver a cultivation registration for growing marijuana for medical use.
4. The Department may not issue a registration to a medical marijuana treatment center dispensary agent.
5. The Department may not issue medical marijuana registration cards for qualifying patients and designated caregivers

C. Medical Use of Marijuana at the Local Level

Medical use of marijuana may have broad impacts upon municipalities. An immediate consideration is the impact on law enforcement, given the potential possession and use of medical marijuana upon acquisition of the applicable registration (*e.g.*, qualifying patient, personal caregiver, medical marijuana treatment center, or dispensary agent).

The scope of a municipality's ability to regulate medical marijuana treatment centers faces an uncertain landscape in Massachusetts at this time, because there are no federal or Massachusetts cases directly on point, because of the conflict between federal law and the Law, and because the Department has not issued regulations on medical use of marijuana. Municipalities should keep in mind the protection of handicapped/disabled individuals under Massachusetts law, including Article 114 of the Amendments to the Massachusetts Constitution and Massachusetts General Laws Chapter 93.

An outright prohibition of medical marijuana treatment centers would raise an issue of whether there has been discrimination against handicapped persons or persons with a disability.

It appears that Massachusetts municipalities have the authority to adopt a temporary moratorium on medical marijuana treatment centers and/or cultivation of marijuana for medical use, such as for studying the impact on local land use. In that event, the Department regulations may be issued before any regulatory provisions are in effect in that municipality.



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Massachusetts municipalities have the authority to adopt zoning requirements to reasonably restrict medical marijuana treatment centers and related uses, and/or the cultivation of marijuana for medical uses, such as by reasonably restricting the location of such a local use. Potential zoning considerations include the location of medical marijuana-related uses, whether zoning approval is required, and other reasonable regulation of such uses traditionally reserved to the exercise of municipal zoning regulation (*e.g.*, building size, hours of operation, setbacks, etc.).

However, the landscape remains uncertain at this time. The to-be-issued regulations from the Department may affect this analysis.

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If you have any questions or concerns with regard to the implementation of the Law, please contact John P. Flynn, Karis L. North, Brandon H. Moss, or the attorney assigned to your account.

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