

# Planning for Medical Marijuana:

Is  
Florida Ready?

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# National Background

27 States including Washington, D.C. have legalized or decriminalized medical marijuana

4 States including Washington, D.C. have legalized recreational marijuana ( Colorado, Washington, Oregon and Alaska)

## Pro-Legalization Trend

It is anticipated that another 6 States are expected to introduce ballot measures to legalize recreational marijuana in 2016 (California, Maine, Massachusetts, Connecticut, Arizona and Nevada)

# What do we know ?

Not a fad

Opinions are plentiful

Unknowns regarding implementation of Amendment 2

Preparation is important

Those who regulate (or prohibit) early and strictly,  
suffer the least



# Interaction with Federal Law

- The Federal Controlled Substances Act (CSA) prohibits the production, distribution and use of marijuana, for medical or recreational purposes
- CSA and Federal Government still have regulatory and enforcement standing throughout the Country – regardless of State regulations allowing the use of marijuana
- All organizations and states point out that everyone who uses, produces, or distributes marijuana – whether for medical or recreational use – is subject to federal law

# Interaction with Federal Law

- No state statute or law protects against federal prosecution.
- Current federal administrative policy decisions indicate a *possible* reluctance to pursue active enforcement against those entities which at least comply with state laws
- May turn on the policy initiatives of the local United States Attorney

# Constitutional Amendment 2

## Medical Marijuana

**TITLE:** Use of Marijuana for Certain Medical Conditions

Ballot Question on the November 4, 2014 Election

Received approximately 58% of the vote – failed to receive the required 60% necessary for a Constitutional Amendment

# Amendment 2

- The constitutional amendment proposed to allow the use of any kind of marijuana which can be consumed in any form
- Implemented by the Department of Health (Florida Legislature was specifically not preempted from regulating, but was not required to regulate)

# Amendment 2

## “Debilitating Medical Condition”

cancer, glaucoma, positive HIV, AIDS, hepatitis C, amyotrophic lateral sclerosis (ALS), Crohn’s disease, Parkinson’s disease, multiple sclerosis or other conditions for which a physician believes that the medical use of marijuana would likely outweigh the potential health risks for a patient.”

# Amendment 2 Opposition Campaign

## AMENDMENT 2: THE DEVIL IS IN THE DETAILS

**FILL HILL LOOPHOLE**

Amendment 2 places no restrictions on the location of "seed" pot plants. Like "pot mills," look for "pot stores" to spring up near restaurants, schools, churches and supermarkets.

**DRUG DEALER LOOPHOLE**

Amendment 2 allows so-called "caregivers" to dispense medical pot. Caregivers do not need medical training. They can be friends—even drug dealers. It will be easier to get a caregiver's name than a driver's license.

**THE POT-FOR-ANYONE-WHO-WANTS-IT LOOPHOLE**

Amendment 2 does not require a doctor's prescription or order to obtain medical pot, because a prescription would violate federal law. Amendments 2 authors define "debilitating medical condition" in any condition from back pain to trouble sleeping. As a result, anyone who wants pot will get it.

**TEENAGER LOOPHOLE**

Under Amendment 2, teens and children will be able to legally purchase pot without their parents' consent. Amendment 2 places no age restriction on pot smoking.

(6) "Medical Marijuana Treatment Center" means an entity that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or inhalants), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their personal caregivers and is registered by the Department.

(2) "Personal caregiver" means a person who is at least twenty-one (21) years old.

(9) "Physician certification" means a written document signed by a physician, stating that in the physician's professional opinion, the patient suffers from a debilitating medical condition, or **other condition** for which a physician believes that the medical use of marijuana would likely outweigh the potential health risks for the patient.

(10) "Qualifying patient" means a person who has been diagnosed to have a debilitating medical condition, who has a physician certification and a valid qualifying patient identification card.

**VOTE NO ON 2**

**VOTE NO ON 2**

LOOPHOLES ▾ ABOUT US ▾ ISN'T WHAT IT SEEMS ▾ MEDIA ▾ BALLOT LANGUAGE ▾ VOLUNTEER ▾ CONTACT US ▾ DONATE ▾ ESPAÑOL

### LOOPHOLES

# Current Public Opinion in Florida

Quinnipiac University poll (April 2015)

- ❑ 84 percent of Floridians support the legalization of medical marijuana
- ❑ 55 percent favor recreational use — both significant numbers.



# Medical Marijuana (2016)

In response to 2014 Election - *Petition for a new proposed Constitutional Amendment currently in place for 2016 Election*

According to drafters, the newly proposed 2016 Amendment was rewritten in an attempt to more explicitly address key issues raised by critics and opposition



# 2016 Medical Marijuana Amendment

- 73,713 petitions needed for new United for Care ballot language to be reviewed by the Florida Supreme Court.
- 683,149 verified signatures are needed by February to reach the 2016 ballot.
- As of the last week of August, United for Care campaign manager reported that the group had obtained 400,000 petition signatures



# Amendment 2 versus proposed 2016 language

## *Amendment 2: Use of Marijuana for Certain Medical Conditions*

Up to five medical marijuana patients per caregiver

“Medical use” means the acquisition, possession, use, delivery, transfer, or administration of marijuana or related supplies by a qualifying patient or personal caregiver for use by a qualifying patient for the treatment of a debilitating medical condition.

Did not address sale of medical marijuana to minors

No regulation of public consumption

Scope of “debilitating medical condition” questioned

## *2016 : Use of Marijuana for Debilitating Medical Conditions*

Department of Health decides the number of patients per caregiver.

The Florida Department of Health can perform background checks on caregivers.

“Medical use” : acquisition, possession, use, delivery, transfer, or administration of an amount of marijuana not in conflict with Department rules, or of related supplies by a qualifying patient or caregiver for use by the caregiver’s designated qualifying patient for the treatment of a debilitating medical condition.

Requires a parent or legal guardian of a minor to consent in writing (and be present in doctor’s office), in order for a physician certification to be issued to a minor

Prohibits public consumption

Tightened scope of debilitating medical condition

# “Debilitating Medical Condition”

## *Amendment 2 (2014)*

“Debilitating Medical Condition” means cancer, glaucoma, positive status for human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), hepatitis C, amyotrophic lateral sclerosis (ALS), Crohn's disease, Parkinson's disease, multiple sclerosis or other conditions for which a physician believes that the medical use of marijuana would likely outweigh the potential health risks for a patient.

## *Proposed 2016 Language*

“Debilitating Medical Condition” means cancer, epilepsy, glaucoma, positive status for human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), post-traumatic stress disorder (PTSD), amyotrophic lateral sclerosis (ALS), Crohn's disease, Parkinson's disease, multiple sclerosis, *or other debilitating medical conditions of the same kind or class as or comparable to those enumerated*, and for which a physician believes that the medical use of marijuana would likely outweigh the potential health risks for a patient.

# Approved 2014 State Legislation § 381.986, Florida Statutes

SB 1030 (Section 381.986 Florida Statutes)

– “Compassionate Medical Cannabis Act of 2014/

Compassionate Use of Low-THC Cannabis”

- No smoking
- Limited qualifying illnesses - cancer or a physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms

# Low-THC Cannabis

- Cannabidiol (CBD) is the non-psychoactive component of the marijuana plant. It has yet to be proven scientifically as a successful treatment, though anecdotal evidence suggests it helps seizures and other severe conditions. Tetrahydrocannabinol (THC) is the part of the plant that produces a high, but it is also known - if not proven - to treat pain, nausea and insomnia, among other symptoms.
- Since 2014, 17 states have legalized the use of marijuana-derived cannabidiol (CBD)
- Low THC Cannabis (Non-euphoric - “Charlotte’s Web” is just one strain of low-THC cannabis)

# Existing State Law

- Up to 5 dispensing organizations
- A dispensing organization must:
  1. Be responsible for all stages – cultivation to dispensing
  2. Be a registered grow facility licensed for the cultivation of more than 400,000 plants
  3. Must be operated by a state licensed nurseryman
  4. Have been operated as a registered nursery in Florida for at least 30 continuous years.

# Existing State Law

- Implemented by the Department of Health which was required to:
  1. develop rules
  2. develop a compassionate use registry for the registry of physicians and patients - complete
  3. authorize and regulate the dispensing organizations
- Rulemaking was required to be complete, and implementation was required to begin, by January 1, 2015.

# Chapter 64-4, F.A.C. (Effective Now)

Implementing rules required by Compassionate Medical Cannabis Act of 2014 (Senate Bill 1030)

**Implementation was stalled because of numerous legal challenges to the proposed rules, claiming that the proposed rules for the program were vague and unfair.**

Final Order issued from the Division of Administrative Hearings Ruling that Proposed Rules 64-4.001, 64-4.002, 64-4.004, 64-4.005, and 64-4.009, F.A.C. Are Not Invalid Exercises of Delegated Legislative Authority

Following the ALJ's order, the Department Filed the Final Chapter 64-4 Rules and Forms for Adoption on May 28, 2015, effective June 17, 2015.

# Application Process for Low THC License



*Applications were accepted beginning June 17, 2015 through 5:00 p.m. on July 8, 2015, for a total of five licenses to grow and distribute low-THC cannabis within the state, to ensure reasonable statewide accessibility and availability necessary for patients registered in the compassionate use registry.*

Five Regions: Northeast, Northwest, Central, Southeast, and Southwest regions of the state.

Overall 28 applications were submitted from 24 nurseries statewide



# Chapter 64-4, F.A.C

## Requirements:

Florida nurseries that have been in business in Florida for at least 30 years and grow a minimum of 400,000 plants were eligible to apply. As part of the application process:

- Nurseries were required to demonstrate, among other things, that they have the financial wherewithal to cover start-up costs and remain in business for two years.
- Nurseries were required to demonstrate “the ability to obtain zoning approval”

# Chapter 64-4, F.A.C

## (11) Dispensing Organization Facility:

- (a) Cultivation Facility: Any area designated in the application to be used for cultivation of low-THC cannabis.
- (b) Processing Facility: Any area designated in the application to be used for processing of Derivative Product.
- (c) Dispensing Facility: Any area designated in the application where Derivative Product is dispensed at retail.

# Medical Marijuana (2015)

(Not limited to low-THC cannabis)

HB 683 *"The Florida Medical Marijuana Act"*

Comprehensive bill that seeks to regulate the cultivation, distribution and use of medical marijuana

Similar to SB 528 except for the following:

Authorizes medical cannabis only in non-smokeable forms

Limits the class of qualified diseases and conditions

Excludes use of medical cannabis for severe and persistent pain, muscle spasms or other qualifying symptoms

Does not allow physicians to prescribe medical cannabis for non-qualifying conditions or symptoms if the patients have "exhausted all other reasonable medical treatments"

Requires physicians who would prescribe medical cannabis to have an active Drug Enforcement Administration registration number

# Low-THC Cannabis (2015)

[CS/CS/SB 7066](#)

The bill would have amended the conditions for which low-THC cannabis may be ordered for a qualified patient's medical use.

The bill also proposed to revise the definition of "medical use" of low-THC cannabis to exclude the use of or administration of low-THC cannabis :

- On any form of public transportation;
- In any public place;
- In a registered qualified patient's place of work, if restricted by his or her employer;
- In a correctional facility;
- On the grounds of any preschool, primary school, or secondary school; or
- On a school bus.

**The bill died on May 1, 2015.**

# HB 63 (Rep. Steube, 2016 Session)

Revision of 2014 Compassionate Medical Cannabis Act, applicable to low-THC cannabis only

- No limits on the number of manufacturers
- lower bonding requirement for applicants from \$5 million to \$2 million (\$100,000 application fee)
- Retail facilities: County BOCC must authorize and determine number and location of retail facilities by ordinance before Department may license retail facilities. Minimum location regulations apply (a retail facility may not be located on the same property as a facility licensed for cultivation or processing of marijuana or within 1,000 feet of an existing public or private elementary or secondary school, a child care facility or licensed substance abuse treatment provider)
- Preemption on Local Regulation of Cultivation and Processing: **All matters regarding the licensure and regulation of cultivation and processing facilities, including the location of such facilities, are preempted to the state.**

# Local Government Implementation and Regulation

Amendment 2 and Proposed 2016 Ballot Language – No reference to the role of local governments in the implementation and regulation

F.S. 381.96 – No provision which preempted local governments from enacting regulations related to low-THC medical marijuana

House Bill 63 (Rep. Steube, for 2016 session) – preempts local governments as to location and regulation of growing and production locations for low-THC products. Authorizes counties to regulate the numbers and locations of retail dispensaries

# Local Government Regulations

As Florida's medical marijuana program gears up, a number of local jurisdictions are adopting or drafting their versions of moratoriums. Some are banning dispensaries and treatment centers, at least temporarily, while others are changing zoning laws to restrict their locations.



# Getting Ready

Can we say NO?

# Getting Ready

Arguably, YES

# Getting Ready - Saying No

- Some states, either by statute or directly in their constitutional enactments, specifically allow local governments the ability to regulate and prohibit.
- Florida's Constitutional Amendment is [silent](#)
- Florida Statutes are [silent](#)
- The *current* rules from the Department of Health are also [silent](#)

# Saying No-Prohibition

- The general rule in Florida is that when state law is silent, Florida municipalities can regulate in any manner not inconsistent with state law
- The general rule is also that municipalities cannot do anything that is inconsistent with federal law, so the Amendment and the legislation create a murky legal situation
- Federal Supremacy supports local government conformance to Federal Law (Controlled Substances Act) – thus prohibition

# Local Government Regulations

- ❑ Ability to prohibit and regulate may be preempted by Legislature in future regulations.
- ❑ Facilities permitted under current regulations may or may not be grandfathered under future regulations



# Medical Marijuana

## Local Government Options:

- “Wait and See”
- Moratorium to allow time to study the issue (maximum of one year without evidence justifying need for additional time)
- Zoning Regulations
- Business Regulations



# Moratorium

“The County hereby imposes a temporary moratorium on the issuance of any permits authorizing the construction or siting of any Cultivation Facility, Processing Facility, Dispensing Facility, or the operation or use of an existing facility as a Cultivation Facility, Processing Facility, Dispensing Facility, or the use of any property for the cultivation, processing, or dispensing of cannabis, including but not limited to low-THC cannabis. This moratorium is imposed pursuant to the County’s police powers to protect the public health, safety and welfare of the community at large.”

“This moratorium shall remain in effect for ***365 days from the effective date of this Ordinance or until such time as repealed by the County***, whichever occurs first, and may be extended by resolution of the Board to the extent permitted by law.”

(Pasco County, Florida)

# Moratorium

- Land Development Regulation
  - Local Planning Agency review required
  - Legislative intent
  - Clear definitions needed of prohibited activities/uses
  - Duration

# Saying No-Prohibition Options

1. Prohibition on anything not allowed under Federal Law, specifically Medical Marijuana- with a “dormant” moratorium in place for a one year period. The moratorium will only become effective upon a change in Federal Law or upon invalidation of prohibition.
2. Prohibition on anything not allowed under Federal Law, specifically Medical Marijuana- with “dormant” regulations in place (zoning and business). Regulations will only become effective upon a change in Federal Law or upon invalidation of prohibition.

# Zoning and LDRs

Local circumstances and preferences will guide a local government's decisions. Features of Land Development Regulations:

- Specific zoning district regulations
- Prohibit all uses; Allow all uses; or Allow retail uses only – no cultivation, processing, etc.
- Location /spacing requirements
- Special Exception or Conditional Use, with renewal required and revocation procedure



# Local Government Business Regulations

- Options for Business Regulations for Retail Outlets (Dispensaries)
- Annual, non-transferable, Medical Marijuana Permit requirements;
- Applicant, owner & employee level 2 background screening requirements
- Local government-issued identification tags for owners/employees
- Security -
  - Operations plan
  - Video surveillance
  - Display and storage security planning requirements
  - Cash storage and protection planning requirements
  - Alarm system
  - Implementation of Police Crime Prevention Through Environmental Design Review (CPTED) standards
  - Armed security personnel on-site during business hours
  - Off-duty police presence – at opening, these stores have drawn significant crowds in other states



# Local Government Business Regulations (continued...)

- Hours of operation
- No on-site consumption of marijuana or alcohol
- Local government inspection on demand
- No outdoor activities
- Odor mitigation
- Signage
- Prohibit minors
- No outside queuing or loitering
- Real property requirements
- Required owner-occupied facility
- If allowing leasing, require that lease disclose the nature of the use and owner specifically authorize the use





Discussion/Questions