

Cannabis Industry Update: NJ Recognizes Alternative Treatment Centers as Essential Businesses; Takes Steps to Ensure Safer Patient Access During COVID-19 Pandemic

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In response to the COVID-19 pandemic, New Jersey has taken several steps to demonstrate the state's strong support for alternative treatment centers (ATCs) and the patients they serve.

First, Governor Phil Murphy's Executive Order 107 closing all non-essential retail businesses explicitly states that "alternative treatment centers that dispense medicinal marijuana" are considered an "essential retail business." This has allowed ATCs to remain open during their normal business hours, under certain conditions. Like other essential retail businesses, however, ATCs must abide by social distancing practices and provide pickup services outside or adjacent to their stores for goods ordered online or by telephone in advance.

Further, ATCs are subject to the additional requirements for in-person operations of essential retail businesses established by the Governor's Executive Order 122. These requirements include limiting occupancy to 50% of capacity, providing special hours of operation for high-risk individuals, installing physical barriers to ensure distance between customers and employees, observing coughing/sneezing etiquette, proper handwashing and sanitization, contactless pickup and delivery options, and requiring customers to wear cloth face coverings while in the store.

Waivers to Facilitate Safer Patient Access

In response to Executive Order 107, and to facilitate safer patient access to ATCs, the Department of Health (DOH) issued a waiver to all ATCs granting relief from several regulations.

First, the DOH issued a waiver to allow for curbside delivery to ATC patients. This waiver was subject to the following terms and conditions:

- For the purposes of dispensing only, an ATC can dispense to qualified patients and caregivers in their cars outside the premises at the address listed on the ATC's permit. This includes parking lots and adjacent sidewalks.
- All orders are to be placed in advance, and the products are to be labeled inside the ATC prior to dispensing.

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- ATCs must provide pick-up times to reduce traffic.
- While the ATC must still conduct an in-person visual verification of a patient's registry ID card prior to dispensing, this can take place without handling the ID card, e.g., through a car window.
- The ATC is still responsible for logging the transactions in the registry and inventory in accordance with state regulations.
- All transactions must be conducted in a secure and monitored manner in accordance with state regulations.
- The ATC must notify the local police department of its intention to dispense to patients on the exterior of the premises.
- The ATC must first submit to the DOH its standard operating procedures for (a) taking orders, verifying registry ID and authorization, and taking payment; (b) logging the transaction in the registry and ATC inventory; and (c) the security it will need to facilitate curbside delivery.

Next, the DOH waived the requirement that an ATC must first document a patient's self-assessment of pain or primary qualifying symptom at the outset of dispensing medicinal marijuana and every three months thereafter. However, ATCs are still required to conduct a consultation for new patients if the patient or caregiver requests one, and such consultations may be conducted by phone.

Further, in an effort to "to incentivize the use of caregivers," the DOH has declared that all caregivers shall be deemed "reduced-fee eligible" and only have to pay a registration fee of \$20. Normally, only certain caregivers are "reduced-fee eligible" and the standard registration fee is \$100.

These waivers will stay in place until Executive Order 103 expires.

Onboarding of New Employees

On March 24, 2020, the DOH also issued temporary guidance to all ATCs to allow faster on-boarding of new employees. Specifically, the DOH is offering provisional authority for individuals to serve as employees of ATCs for a period of up to three months, as long as they meet certain conditions.

The ATC must first conduct a background check of the employee through a credible, third-party service and provide those results to the DOH. Further, the employee must attest to the DOH that they have not been convicted of a disqualifying conviction, that the ATC's background check results are accurate, and that the employee will submit fingerprints pursuant to the regulations as soon as practicable.

Such attestations must include (1) the ATC's name; (2) employee's name, title and signature; (3) date; (4) statement affirming the employee has not been convicted of a disqualifying conviction; (5) statement affirming that the ATC was authorized to conduct a private background check and that the results are accurate and truthful; and (6) a statement affirming that the employee will submit fingerprints as soon as practicable.

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Finally, the employee must be scheduled with MorphoTrak/IdentiGo to be fingerprinted. However, if the employee cannot be fingerprinted due to COVID-19 related closures, the employee or the ATC must notify the DOH of the delay and comply with this requirement as soon as practicable. ATCs must submit any of these requests for provisional employees to their respective Field Monitor.

The foregoing measures demonstrate that New Jersey is dedicated to supporting both ATCs and the more than 73,000 patients that they continue to serve.

Please contact the author of this Alert, **Robert J. Flanagan III** rflanagan@greenbaumlaw.com | 732.476.3204 with questions regarding this or other cannabis industry related issues.