



STATE OF DELAWARE

OFFICE OF THE GOVERNOR

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GOVERNOR

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Dear Senator Henry and Representative Keeley:

Thanks to your leadership, the General Assembly in 2011 passed SB 17 to provide safe, well-regulated access to medical marijuana for cancer patients and others suffering from debilitating medical conditions. In keeping with that law, Delaware's Department of Health and Social Services now issues identification cards to qualifying patients, upon the recommendation of their doctors. These cards provide qualifying patients with state-law immunity from arrest and prosecution in connection with their medical use of marijuana.

As you know, I suspended the licensing of compassion centers, as contemplated by SB 17, due to conflicting signals that Delaware and other states have received from the federal government regarding its posture toward state medical marijuana programs. In 2009, the United States Department of Justice stated, in a memorandum from Deputy Attorney General Ogden (the "Ogden Memorandum"), that it was not a Departmental priority to undertake enforcement actions against "**individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana.**" (Memorandum from David W. Ogden to U.S. Attorneys, Oct. 19, 2009) (bold emphasis in original). Shortly after the General Assembly passed SB 17, however, the U.S. Department of Justice issued a new memorandum from Deputy Attorney General Cole (the "Cole Memorandum"), indicating that the Department might prosecute persons involved in the distribution and sale of medical marijuana – even if they were in clear compliance with a state's medical marijuana laws. It was frustrating to you, to me and to many ill Delawareans to suspend our work on licensing compassion centers, but given the change of stance from the federal government and the uncertainty as to how the federal government might proceed, it was the responsible decision at the time.

The sensible and humane aim of state policy in Delaware remains to ensure that medical marijuana is accessible via a safe, well-regulated channel of distribution to patients with demonstrated medical need. At your urging and with your assistance, my office has spent the last few months conducting a review of the policies that other states have adopted in response to the conflicting signals sent by the federal government. Delaware was not alone in suspending aspects of its program after the Cole memo seemingly announced a change in federal policy. Other states, however, have proceeded with their programs since that time. As an alternative to leaving patients in their states without a means of safe access, potentially

driving them into the black market, these states have chosen instead to implement their safe-access programs, while at the same time making modifications to those programs to address federal concerns. To date, states like Rhode Island and New Jersey that have taken this approach have not been subject to federal enforcement action.

As a result of our review of policies in Rhode Island, New Jersey and other states, I have become convinced that proceeding with our program, while making considered modifications to address federal concerns, is the appropriate course for Delaware. Therefore, I am writing you to inform you that DHSS will proceed to issue a request for proposal (RFP) for a pilot compassion center to open in Delaware next year.

The Cole memo expressed concern about state medical marijuana programs leading to the authorization in a state of “multiple large-scale, privately-operated industrial marijuana cultivation centers” with “revenue projections in the millions of dollars based on the planned cultivation of tens of thousands of cannabis plants.” To address that concern, regulations that will be proposed by DHSS in the coming months, besides authorizing at this point only a single pilot compassion center, will limit Delaware’s pilot compassion center to the cultivation of no more than 150 plants and an on-site inventory of no more than 1,500 ounces of medical marijuana. This is similar to limits on compassion centers put in place in states like Rhode Island and New Mexico to respond to the Cole memo’s concern about the authorization of multiple large-scale centers in a single state.

To address the concern implicit in the Cole memo that marijuana authorized for medical use might be diverted to the black market, DHSS’s proposed compassion center regulations will also include tight security requirements. Among other requirements, the pilot compassion center’s facility will be subject to 24/7 video monitoring. The center will be required to verify patient and caregiver identification cards via a phone and/or online verification system before dispensing marijuana and to keep books and records in compliance with generally accepted accounting principles. The proposed regulations will authorize DHSS to access those books and records at all time and will require the Department to conduct random inspections of the center. The compassion center will also be required to report missing marijuana within 24 hours and disclose the source of any funds over \$5,000.

In keeping with the concerns of the federal government expressed in the Cole memo, to ensure that the medical purpose of Delaware’s program is respected and maintained, DHSS will be required, before adding medical conditions for the treatment or alleviation of which medical marijuana could be authorized, to find: 1) that the medical condition is debilitating; and 2) that marijuana is more likely than not to have the potential to be beneficial to treat or alleviate the debilitation associated with the medical condition.

The legal environment in Washington and the policy landscape across the country on this issue both continue to evolve rapidly. We will continue to monitor developments as we move forward with our program in the interest of Delaware patients. It may be necessary for us to enact legislative changes to our statute in the future. I hope that, as circumstances continue to evolve, it will not become necessary once again to suspend our program, but I will not hesitate to do so should changed circumstances once again warrant it.

I thank you again for your leadership on behalf of patients and for your assistance in reviewing with my office the policies of other states. I believe that the path forward we have identified together keeps faith with Delaware's commitment to patients, while doing all that is practically possible to address the legitimate concerns of the federal government.

Sincerely,



Jack A. Markell
Governor

CC: The Honorable Joseph R. Biden, III
Attorney General
The Honorable Patricia M. Blevins
President Pro Tempore
The Honorable Peter C. Schwartzkopf
Speaker of the House
The Honorable F. Gary Simpson
Senate Minority Leader
The Honorable Daniel B. Short
House Minority Leader