

# Medical Marijuana in New York

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# Before 2014

- Assembly passes Medical Marijuana bills 4 times
  - 2007, 2008, 2012, 2013
  - Assembly = 2-1 Democratic majority
  - 22 States had MMJ pre-2014

# Senate and Executive Opposition

- Senate Republican Majority opposed
- Governor Cuomo opposed:
  - 2010: “Dangers outweigh benefits”
  - 2012: “I think the risks outweigh the benefits at this point”
  - 2013: “I don’t support it;” “non-starter”

# 2014

- Cuomo State of the State (January 2014)
  - Calls for revival of Olivieri program
  - Limited-access, clinical trials-type program enacted into law 30 years ago (named for former Assembly Member)
  - Was never actually implemented, is still on the books
  - (Public Health Law Article 33-A)

# 2014 political climate

- Public opinion: 88%-9% support (Quinnipiac)
- Dravet kids – Washington Post “mommy lobby”
- Coalition forms: “Compassionate Care NY”
  - Patients, providers, personal stories
  - Missy Miller of Atlantic Beach – later GOP State Assembly Member
- Also: Major Wall Street money, venture capital, investors becoming donors

- As session goes on, still no action on Olivieri program
- Skelos in May 2014: “[vote] could be possible this session”
- Senate Majority working out their vote count; reliance on Minority party

# Enactment of CCA

- May 27, 2014: Assembly passes A6357B
  - 5<sup>th</sup> Assembly passage of an MMJ bill
- Signaling from Senate leadership indicates willingness; Governor becomes involved
- Early-mid June: Amendments made to meet Senate and Executive conditions for passage and signing
- June 19: Assembly passes A6357E

- June 20: Senate passes companion bill
- June 24: Bill sent to Governor
- July 5, 2014: Governor signs “Compassionate Care Act” (CCA) into law
  - Effective date: January 1, 2016 (18 months or so to implement)



# The most conservative law

- Several changes to the bill necessary for Senate and Executive agreement
- 2012 Assembly version: “...a severe debilitating or life-threatening condition”
  - 2014 enacted CCA: Statutory conditions list, “or as added by the Commissioner”
- 2012 Assembly version: Allows smoking
  - 2014 enacted CCA: No whole flower / no smoking

- 2012 Assembly version: Physician, PA, or NP can certify patients
  - 2014 enacted CCA: Physicians only
- 2012 Assembly version: No statutory restrictions on number of ROs or dispensaries
  - 2014 enacted CCA: 5 ROs (COH can add more), 4 dispensaries each
- 2012 Assembly version: No mandatory vertical integration (more on this later)

# Enactment and Regulation

- Effective date 1/1/16; in the interim, DOH has to:
  - Pick the 5 ROs
  - Draft regs
    - Regs proposed 12/31/14
    - Hundreds of public comments
    - Adopted regs in April 2015 exactly the same as draft

# The law in 2015

- 5 ROs / 20 dispensaries (worst ratio per population of any state)
- “Seed to sale” tracking, mandatory vertical integration (regs - not clear this is required by law)
- Physicians only
- No smoking
- Highest prices in the country
  
- Gottfried in 2015: “The law and the regulations are very restrictive and will make it difficult, perhaps impossible, for many patients to get access.”

# Regulatory and Statutory Changes

- End of 2016-2017, changes begin
  - Bad press about non-functionality
  - Fiscal problems for ROs
- November 2016 – Adds NPs and PAs back in (regs)
- End of 2016: Just 750 practitioners (out of 90,000 physicians in NYS); 11,000 patients

- March 2017 – Adds severe chronic pain (regs)
  - Language matches legislation
  - (Assembly moving multiple amendments to CCA; Senate doesn't.)
- DOH posts list of providers online
  - (regs – matches legislation)
- August 2017 – Loosen some dispensary rules (fire dept example); additional forms (i.e. lozenges); all in regs
- August 2017 – 1,100 providers / 26,000 patients

- 2017 – Additional 5/20 ROs/dispensaries
  - Still lowest ratio
- 2017 – Allow delivery – implications for MVI?
- Spring 2017 – Legislature passes PTSD, signed 11/11/17
- October 2017 – Facility caregiver guidance

- June 2018 – Opioid alternative passes legislature (DOH issues similar reg at same time)
  - Signed into law September 2018
- November 2018 – 2,000 providers / 80,000 patients (chronic pain drives increase)



# Outstanding problems

- Price/insurance issues
  - New bill for public payors
  - Smoking is cheapest form
  - At one point was 40% non-returning patients
- Too few practitioners – tried shortening course, discounts on course
  - General conservatism of drs; fear of Feds
- Fed ambiguity re: housing, facilities, etc
- Business model improving, but still onerous
  - Lab testing – still just Wadsworth, DOH working on others

# Current bills

- A11390 – Public payers coverage
- A10588 – Omnibus (labs; contracting out; facility caregivers (somewhat done by regs); additional dispensaries – union problem)
- A8915 – Any practitioner (dentists & podiatrists)
- A8904 – Strike conditions list, replace with “any severe debilitating or life-threatening”
- (Several other smaller bills)

# Adult use – what happens to CCA?

- Likely discussion Spring 2019
- Effects on MMJ program:
  - Poach patients (esp pain/smoking)
  - Role of ROs? Head start or prohibit?
    - Conflict: MWBE/de-centralized model vs large company/easy-to-organize model
  - How to sell – same or separate dispensaries?