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Is Cannabis an Essential Business During Coronavirus Closures?

The continuing spread of the COVID-19 pandemic within the United States has prompted emergency declarations across the country. Officials at every level of government are using these and other public health tools to stem the spread of the virus.

As a result of these new directives, state and local governments are adapting through the issuance of emergency rules and regulations. Among the most common emergency directives issued this week are restrictions on business operations, which often involve recommended closures of most nonessential businesses. Some of the impacted businesses include restaurants, gyms, recreation centers, casinos, theaters, bars, and sport venues. However, most such rules include carve-outs for essential businesses.

As states and local governments are closing or considering closing retail operations, multiple city and state health departments have affirmed that cannabis dispensaries are “essential” businesses, like pharmacies or grocery stores, and will remain open.

As state and local government approaches to this issue evolve, a number of possible solutions have emerged. States are implementing some combination of directives that (1) permit licensed dispensaries to remain open as essential health care facilities; and (2) allow drive-up orders and home delivery. These moves are intended to provide continued access for hundreds of thousands of cannabis users, while protecting customers and staff from the COVID-19 virus. States that allow recreational cannabis need to also consider that many customers purchase recreational cannabis for medical purposes, while avoiding the appointments and processes required to register as a medical patient.

In New York, licensed dispensaries **will be allowed** to expand their delivery service without prior government approval and to conduct sales through shops’ doors and windows, provided they comply with all regulations and laws, such as recording the transaction on camera and validating patients’ identification. The New York State Department of Health considers their medical marijuana program to be an essential service, because they are considered to be medical providers.

Illinois’ Department of Financial and Professional Regulation **announced it would allow** medical dispensaries to sell cannabis “on the dispensary’s property or on a public walkway or curb adjacent to the dispensary,” but noted that delivery to patients was not allowed.

Michigan’s Marijuana Regulatory Agency **issued an advisory bulletin** in connection with the Declaration of State Emergency issued by Michigan’s governor that allows licensed dispensaries to engage in approved home deliveries

and curbside pickups of cannabis and related products. Michigan is also allowing customers to place orders online or in-person from their cars. Illinois **has taken a similar approach**, allowing medical cannabis patients and dispensaries to process orders outside of the physical store itself, including curbside or in the parking lot.

Pennsylvania has also **issued emergency directives** regarding cannabis business operations, but without providing for any improved access such as curbside pickup or home delivery. Pennsylvania's Department of Health has recommended the temporary closure of "non-essential businesses" in various counties for 14 days. However, the directives exclude pharmacies and other health care facilities; and under these directives, medical marijuana dispensaries are treated akin to traditional pharmacies considered "essential" and thus may remain open during the emergency. Notwithstanding this directive, others in the Pennsylvania cannabis industry are seeking to take patient assistance a step further. One dispensary owner in particular has **begun to solicit volunteer caregivers** to enroll in Pennsylvania's medical marijuana program in order to provide ad hoc delivery services to medical marijuana patients unable to visit dispensaries in person, especially terminally ill and immunocompromised individuals.

Officials in New Jersey are also reviewing emergency measures to assist cannabis patients and business owners. In addition to safety measures intended to protect employees of cultivators and processors, the New Jersey Department of Health is preparing to issue rules that would improve cannabis access for patients. These measures are likely to include appointment-based scheduling, exclusive shopping times for older citizens, priority access for terminally ill patients, walk-up or curbside pickup, home delivery, and relaxation of rules regarding amounts of cannabis product patients can purchase as well as requirements regarding medical consultations in order to enroll in the state's medical marijuana program. Any such measures would be in effect for the duration of the emergency and would likely end thereafter.

The Maryland Medical Cannabis Commission issued Bulletin 2020-006 on March 16, 2020, which **included a number of relaxed or modified rules** for the duration of the COVID-19 public health emergency. Under Maryland's temporarily modified rules, dispensaries may deliver products to patients in their cars, outside of the licensed premises. Maryland officials have also suspended current sales styles that involve communal gathering and the use of shared "sniff jars" in order to encourage social distancing and reduce infections.

Delaware will also allow curbside pickup of cannabis products.

This week, the San Francisco Department of Public Health reversed direction by announcing that cannabis dispensaries may reopen if they implement health practices because they have deemed that cannabis an "essential medicine for many San Francisco residents." Other California counties that have closed bars and clubs are permitting dispensaries (and other retail stores) to remain open, for now.

There are a number of ways in which state and local governments can temporarily relax or revise cannabis-related regulations during emergency declarations associated with the COVID-19 outbreak. A comprehensive approach will also include new rules intended to protect customers and staff, while promoting public health objectives. Rules could include any of the following:

- Mandatory signage regarding hand washing and not visiting establishments if customers feel unwell.
- Suspending "deli-style" sales and "sniff jars" of cannabis products.
- Prioritizing access to cannabis by patients and caregivers with particular conditions, especially terminally ill patients and patients with compromised immune systems.
- Relaxing restrictions around curbside or drive-thru pickup.
- Permitting home deliveries.
- Allowing orders to be taken or scheduled by phone or online.
- Scheduling customer appointments to manage crowds within dispensaries.

- Suspending or modifying limits on the amount of product customers can purchase in a single visit.

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Douglas J. Friednash
Shareholder
dfriednash@bhfs.com
303.223.1221

Stanley L. Garnett
Shareholder
sgarnett@bhfs.com
303.223.1286

Amy M. Steinfeld
Shareholder
asteinfeld@bhfs.com
805.882.1409

Joshua A. Weiss
Associate
jweiss@bhfs.com
303.223.1268

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