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Pot Luck

Conflicting rules play havoc with the medical-marijuana industry

By Jim Mimiaga and Gail Binkly

Second of a two-part series

Not long ago, Colorado's pot farms were clandestine operations hiding from helicopter flyovers, narcs and undercover police investigations. Nowadays in the booming medical-marijuana industry, growers are more worried about bureaucracy and unpredictable regulations than law enforcement.

Cities and counties across Colorado are struggling to decide how to regulate the production, sale and distribution of medical marijuana — made legal by state voters in 2000, but still banned by the federal government.

The Montezuma County commissioners' recent decision to ban MMJ in the unincorporated county further clouded the issue, as dispensaries are legal in the municipalities of Cortez, Dolores and Mancos. However, under new state laws adopted this summer, dispensaries must grow 70 percent of their own supply, and the bans in Dolores County and now Montezuma mean some of them will be scrambling to find a place to grow.

“There are a multitude of things that are problematic or contradictory in the laws,” said Travis Pollock, owner of the Nature's Own Wellness medical-marijuana centers in Durango and Cortez.

“Home-grown's all right with me, homegrown is the way it should be,” sang '60s rocker Neil Young, and that is apparently the way Colorado voters envisioned that patients would be supplied when they passed an amendment legalizing medical marijuana in 2000.

Under Amendment 20, a resident with a state-approved MMJ card can grow pot in his or her backyard, home, vacant field or farm. The law allows each patient six plants, three in the mature flowering stage and three in the younger stage.

If patients do not have the expertise or facilities to grow their own medicine, they can

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appoint a caregiver to grow the six plants for them. Caregivers and individual patients can legally grow anywhere in the state.

Or they can go shopping at any of the 717 dispensaries that have sprouted up statewide since the Obama administration announced it wouldn't be enforcing federal laws against medical marijuana.

Scrambling to keep up with the industry, the Colorado legislature passed a plethora of new regulations this summer. One rule limits caregivers to five patients each (30 plants). Any operation with more plants is considered a dispensary (now called a center) and must be licensed by the Colorado Department of Revenue.

The state put a moratorium on new license applications until Feb 1, 2011, while waiting for more thorough regulations to be developed by the revenue department.

The new requirement that dispensaries grow 70 percent of their product and that growers sell 70 percent of their product to one dispensary is designed to cut down on black-market suppliers, but this may lead to a shortage of product for MMJ patients, something that has already happened in New Mexico.

Grow operations are legal in Montezuma County's three municipalities, but finding a viable site can sometimes be a problem.

Pollock said the new rule has indeed caused some adjustments for dispensaries. "The biggest hindrance we're seeing is the 70-30 rule, and no longer being able to purchase from caregivers. Before, we were able to purchase from caregivers, purchase their excess medicine.

"It's hindered us in trying to have access and availability. We are having to run all over the system and form new relationships."

But not all owners have found the new regulations a problem.

"The state stepping in to make sure dispensaries grow our own medicine is welcomed," said Aric Yoder of the Herbal Alternative, located on Cortez's Main Street.

"That way the product is better controlled and lessens the black-market influence. A lot of places were getting their medicines from God knows where with God knows what on it."

Owner control of their product makes for a better product, Yoder said, which translates to patient safety.

"People who need medicines often have weaker immune systems, so they do not need to be exposed to harmful chemicals or fertilizers."

In Southwest Colorado, with its strong agricultural roots, growing MMJ as a caregiver may sound appealing. But cultivating marijuana can be challenging, and don't ask for tips from the local CSU extension office, said Tom Hooten, interim director of the Montezuma County office.

"They are on their own, because it is still a banned drug federally and we are under the umbrella of the USDA, so we legally cannot give them any advice," he said.

The new laws allow counties and municipalities to ban dispensaries and commercial grow operations if they please, or to pass additional regulations if they are allowed. When Montezuma County decided to ban commercial MMJ, the decision made any pot farms currently in the county illegal.

Dale Kirkman, who manages Buckethead Herbal Healing Center in Dolores, said he and his business partner, Eric Haley, have sunk \$250,000 into their marijuana dispensary and commercial pot farm located in the county, but could suddenly lose it all.

“I came here for the job opportunity and sank my life savings and two years of labor into this business, and now that I am finally able to pay the bills they want to take it from me,” said Kirkman. “If I have to shut down, I’ll lose the farm and my \$50,000 down payment, plus all the money to renovate. I’ll be broke.”

Buckethead had to put up \$10,000 to apply for a state license from the Department of Revenue, with no guarantee of a refund if the application is denied, Kirkman said.

“No other business has this much oversight,” he said.

Another hurdle for dispensaries in Cortez is the increased security required for grow operations, which law officers worry will become a target for theft. Increased patrols around dispensaries and a strong relationship with police are important, those in the business say.

“We’ve had the police chief, mayor and drug task force people in to check it out so they know what is going on,” Yoder said. Buckethead’s grow operations have also been visited by the sheriff’s office, Kirkman said.

“They have visited my farm and store and have been supportive, saying as long as you have a license, we are not going to touch you, because it is medication and we are doing everything by the rules.”

But some of the regulations and fees imposed on MMJ centers are onerous, Kirkman said. For example, to apply for a state license, “you have to sign away your civil rights, and that is unfair. They have the right to search your place and records with no warrant, for example, and they limit your rights to go to court and defend yourself.

“This scared off a lot of people and they closed up shop and left town,” he said, adding that he thinks the fees are also unreasonable, netting the state \$7.3 million to date.

“The license is \$10,000 for two years. Liquor stores don’t pay that much. I’m paying 50 percent of my profits for license fees at different government levels.”

He speculated that pharmaceutical companies are pushing for regulations as a way to drive out the competition that medical marijuana represents.

“A lot of my patients are coming into my shop for medicinal marijuana and throwing their pills in the garbage, which means less money being spent on pharmaceuticals, and so those companies are saying, ‘We need to get rid of these people,’” Kirkman said.

Dispensaries face another obstacle in that obtaining financial services is difficult because of MMJ’s illegal status at the federal level. James Kahn is a Telluride attorney who represents medical-marijuana patients and caregivers and also helps operate Durango Healing Center, a dispensary. He said Bank of Durango and Alpine Bank ended the healing center’s accounts after discovering the nature of the business.

“We just found out today that our bank dropped us after we tried to set up some payroll accounts, so now we are looking into credit unions up in Denver,” he said.

Another contradictory aspect of the law involves the surplus generated by harvested plants. Patients are allowed to possess 2 ounces of usable marijuana, but a single plant can yield a pound or more, putting caregivers and patients at risk for being over the limit.

“This is a dilemma, because three budding plants could produce more than 2 ounces and that puts you out of compliance,” Kahn said, adding that patients could stagger the timing of their harvest to provide 2 ounces at a time as needed to avoid larger one-time yields.

Pollock said there is also confusion over infused-products manufacturing. Infused products include baked goods containing marijuana. In the past, a lot of the goods were made by people who rented a local restaurant for a few hours, he said, but the new regulations require that each infusedproducts license be dedicated to one kitchen and that kitchen not make anything other than infused-marijuana products.

Pollock said some manufacturers are continuing to operate in violation of the rules. “We have had to drop some of the vendors we have been working with because of that,” he said. “We have had to build out a whole kitchen — that was really interesting.”

Pollock said he works to follow the letter of the law in every regard. “We try to position ourselves correctly to make sure we are conforming with House Bill 1284 and not forming relationships with anybody operating in the gray areas.”

He has a good relationship with law enforcement, he said. “Law enforcement has been awesome. We have open lines of communication with the chiefs of police, sheriff ’s deputies, and the Southwest Drug Task Force.”

Pollock is working with the Arizona Medical Marijuana Policy Project, a grassroots effort to get Arizona voters to pass the MMJ initiative that is on their November 2010 ballot. He said the times ahead will be interesting for proponents of marijuana availability.

“I think this is going to be an issue that is going to sweep across the nation over the next 20 years,” he said. “Directly behind medical marijuana will be the recreational aspect. I think we will have medical marijuana going from West to East over the next 10 years and recreational access will follow. It will be real interesting to follow it and see how this plays out.”

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