

Ohio's Medical Marijuana Program

Four Years In - Where We've Been, and Where We're Going



BY: WALTER (CHAD) BLACKHAM

House Bill 523, 'The Ohio Medical Marijuana Control Program', was passed on Sept, 8, 2016 and created a landmark system for legalized medical marijuana in Ohio. H.B. 523's intent was to swiftly set up a medical marijuana regime to address patient needs as well as capitalize on the enormous economic opportunity of this growing industry. In reality, the program was subject to overambitious start dates, staggered openings and other issues impeding full deployment. However, the program has also seen notable

improvements since then, and there is reason to be hopeful about its continued future success. Now that we're four years in, it's a good time to take a look at where the program was, and where it's going.

H.B. 523's proposed structure was simple and favored a so-called "seed-to stem" approach that would track the marijuana plant from when it was a seed up to the time it was sold. Under the regime, cultivators were to grow cannabis to be sold to processors and dispensaries. Through various methods of extraction, processors would turn cannabis into different products such as tinctures and capsules to be sold at dispensaries. Laboratories



would test products throughout the supply chain to ensure product integrity. Dispensaries would sell products and interface with caregivers and end-user patients.

At the time it was launched, Ohio's plan differed from many other states by favoring a multi-regulatory approach to oversee the industry. The Department of Commerce was to have jurisdiction over cultivators, processors and laboratories, while the Board of Pharmacy would license and oversee dispensaries. The State Medical Board would regulate how physicians could recommend marijuana (yes, recommend and not prescribe - more on that in moment), and determine what conditions qualified a patient for medical marijuana use. The bill also created a new Medical Marijuana Advisory Committee to oversee the entire program and issue recommendations for improvement.

The application process was arduous. Prospective licensees had to submit a business plan, an operations plan, a security plan, a quality assurance plan, and a financial plan. While the full regulations were not yet drafted, they would go on to describe rigorous security, training and business operation standards. And the process was expensive. A "Level I" cultivation license permitting the awardee to grow up to 25,000 square feet of marijuana required prospective cultivators to pay a \$20,000 fee just to submit their application, with a \$180,000 licensing fee and a \$200,000 annual fee stacked on top if they were successful. The program was also highly



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competitive due to the limited number of license awards.

The bill also arrived during a time of political uncertainty. Then-U.S. Attorney General Jeff Sessions was an outspoken critic of the marijuana industry, and many states had seen mixed success with their regulatory efforts. Marijuana also remained a Schedule I substance federally, which is

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why Ohio doctors could only recommend, and not prescribe, marijuana. There was one bright spot at the federal level, however, in that the Rohrabacher-Farr amendment continued to prevent the allocation of funds to the Department of Justice for purposes of prosecuting state-compliant cannabis regimes.

H.B. 523 put forth an ambitious timeline to establish a well-regulated marijuana industry within two years. However, amid delays involving errors in grading, licensing disputes and missed regulatory deadlines, the program failed to meet its target launch date of Sept. 8, 2018. What had been a hard start date was now a hard sell, as the program transitioned into a soft rollout.

But, despite delays dogging the Ohio Medical Marijuana Control Program, it pushed forward. In late 2018, Ohio launched its Medical Marijuana Patient and Caregiver Registry. Final regulations and rules for participants were promulgated by the Department of Commerce and the Board of Pharmacy. And then came one of the biggest changes in federal marijuana policy in decades. The 2018 Farm Bill legalized production of hemp, defined as marijuana containing less than .3 percent tetrahydrocannabinol, and hemp-derived cannabidiol for licensed cultivators who produced hemp in accordance with a state-made plan approved by the U.S. Department of Agriculture, and in compliance with applicable state law. In January

2019, the first Ohio dispensary opened its doors. In July 2019, the Ohio Legislature passed Senate Bill 57 decriminalizing hemp and instituting a legal framework for hemp licensing and cultivation, while also allowing retailers to sell hemp derived products like CBD.

Initial sales figures for the program were modest. Jan. 27, 2019's first-day sales totaled only \$75,000 (compare this to the \$3.2 million Illinois brought in on its first day of recreational sales). The application process remained ongoing, with provisional licenses still being awarded to dispensaries so they could begin construction. As of November 2019, figures published by the Board of Pharmacy stated that there were only 69,084 registered patients, despite some sources indicating up to 3.5 million Ohioans could be eligible for medical marijuana use, and only 45,987 registered patients had actually purchased medical marijuana. The tight supply of licensed cultivators, processors and dispensaries also kept prices high, in some cases costing patients up to \$3,840 for a 90-day supply of cannabis with no insurance coverage.

Nevertheless, the program continued to advance. The number of cultivators, processors, dispensaries, patients, caregivers and physicians recommending marijuana climbed throughout the end of the year and into the beginning of 2020. And then, as the COVID-19 pandemic struck, numbers began to

surge in cannabis regimes throughout the nation. Illinois top cannabis regulator Toi Hutchinson took note of the trend, claiming the marijuana industry is “recession-proof” and “pandemic-proof.” As of July 2020, the Ohio Board of Pharmacy stated that 159,513 physicians had recommended marijuana, the number of registered patients had climbed to 125,087 and 100,224 unique purchases had been made.

As Ohio’s Medical Marijuana Control Program enters its fourth year of operation, some issues must still be tackled. Marijuana businesses must continue to open shop, adjust operations for the COVID-19 pandemic, and efforts must be made to bring the cost of marijuana down for patients. More cultivation licenses could be issued to smaller grower operations and farmers to accomplish just that, and to avoid precluding small businesses from the industry. There is still general confusion among Ohioans about how to obtain medical marijuana cards, and the costs for obtaining one can be prohibitively high to patients of lower socioeconomic means.

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program’s continuing success. The Medical Marijuana Control Program brought in \$58.3 million in sales during its first year. Projections estimate that the program could make up to \$161 million in 2020 alone, and potentially up to \$1.3 billion in 2025. The Board of Pharmacy continues to add new qualifying conditions for medical marijuana use, ensuring even more patients get the help they need.

The Ohio Medical Marijuana Control Program may have had a rocky start, but the Ohio Legislature and the governing agencies should be commended for tackling a complex issue that from a healthcare, business and social equity perspective improves the lives of millions of Ohioans. As rollout continues, so too will increased sales and patient access. Four years in, there is great reason to be optimistic about the future of the Ohio Medical Marijuana Control Program.



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