

Today's Tip

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State up in arms over Sessions' marijuana action

By NICK NIEDZWIADK and DAN GOLDBERG

ALBANY — Political leaders and the state's nascent medical marijuana industry expressed outrage over U.S. Attorney General Jeff Sessions' decision Thursday to rescind the Obama administration's policy permitting states to legalize marijuana with minimal interference from the federal government.

"Our country is in the midst of an opioid crisis and the AG is going to divert resources to cracking down on medical marijuana? This is either willfully ignorant or cowing to corporate greed on behalf of pharma special interest profits," Sen. Kirsten Gillibrand wrote in a series of tweets. "DOJ should investigate how pharma helped create the opioid crisis, not institute policies that take marijuana based medicines from patients and needlessly target non-violent minority youths."

Sessions, a staunch opponent to both medicinal and recreational marijuana use, pulled back federal guidelines that limited prosecutions for marijuana-related offenses as long as a person or business was operating legally under state laws.

The move comes just days after California's legalization of recreational marijuana went into effect and could derail legalization efforts in states like New Jersey.

"Given the Department's well-established general principles, previous nationwide guidance specific to marijuana enforcement is unnecessary and is rescinded, effective immediately," Sessions wrote.

Hillary Peckham, chief operating officer of Etain LLC, one of the state's licensed medical marijuana producers, called Sessions' move an "attack on the patients and families in New York and around the country."

"Whether you're the parent of a child with epilepsy, a cancer patient or a veteran dealing with PTSD, you shouldn't have to live in fear when seeking legal medical treatment for a debilitating illness," she said in a statement.

In his one-page directive, Sessions wrote that future prosecutions would be up to the discretion of the local U.S. attorney.

The architects of New York's medical marijuana law, the Compassionate Care Act, were quick to denounce the move.

"This reactionary, drug-war thinking is way out of step with public opinion and contrary to good public health and public safety policy," Assembly Health Chairman Dick Gottfried (D-Manhattan) said in a statement. "Sessions's idea of respecting states' rights is very selective."

State Sen. Diane Savino (IDC-Staten Island) called on the lawmakers to pass a law protecting medical marijuana.

"We need action now," she said in a statement. "The Attorney General does not make laws, he enforces them, Congress makes law."

The Medical Cannabis Industry Association, a trade group that represents New York's licensed medical marijuana producers, echoed Savino and others concerned about the change.

"It's time for members of Congress that believe in state-rights and drug reform to work together to pass bi-partisan legislation to remove marijuana from the Controlled Substances Act and allow individual states to regulate marijuana as they deem appropriate," it said in a statement.

It's too soon to tell how much, if any, practical effect the change will have, or if federal prosecutors will clamp down more on recreational marijuana providers rather than those for medicinal use.

"This may result in even more confusion in marijuana policy, as some U.S. attorneys may decide to prosecute, while others may not," wrote Heather Trela, chief of staff at the Rockefeller Institute of Government.

But it is undeniably a step back for an industry that has for years seen increasing professionalization, legitimization and popular support.

Shares of publicly traded marijuana companies, which had operated in quasi-legality under the Obama-era policies, reeled in the immediate aftermath. One possible effect

is that it may become harder for the marijuana industry — already heavily reliant on cash — to secure loans and financing from banks worried about exposing themselves to charges related to abetting a criminal enterprise.

Another concern is the possible loss of tax revenue from marijuana sales that states, particularly those which have legalized recreational use, had banked on and promoted as part of legalization efforts. California estimated it will make \$1 billion a year from marijuana legalization, while New Jersey Gov.-elect Phil Murphy touted the potential for \$300 million in tax revenue on the campaign trail last year.

While New York imposes a 7 percent excise tax on its program, it's not designed to be a major money maker, and the state projects just \$1 million in revenue for the next three years.

Health Commissioner Howard Zucker said the state remains committed to continuing its medical marijuana program, which 40,286 patients have taken advantage of since its inception in 2016.

“These patients need help, and we cannot turn our backs on them,” Zucker said in a statement. “We will review any forthcoming guidance from the federal government with a goal of continuing the program and protecting the patients and providers who participate in it.”

A spokeswoman for Attorney General Eric Schneiderman deferred comment to the executive branch.

Lavern's Law sponsor pessimistic about bill's chances

By DAN GOLDBERG and NICK NIEDZWIADK

The prime sponsor of Lavern's Law, the most controversial piece of health care legislation from 2017, says there isn't much hope for his bill becoming law.

The bill would extend the time a patient can bring a lawsuit against a physician or hospital for a missed cancer diagnosis. State Sen. John DeFrancisco, the Republican Deputy Majority Leader who sponsored the legislation, said he is pessimistic about its chances in the face of ambivalence from the executive chamber.

Gov. Andrew Cuomo has until the end of this month to make a decision on the legislation. Trial lawyers and patient advocates support the bill while hospitals, physicians and malpractice insurers liken it to a Pandora's Box that is opening at the worst possible time.

Cuomo appears stuck in the middle. He has, in the past, expressed interest in the idea, but he is sensitive to concerns from hospitals.

There are plenty of instances in recent memory where Cuomo has vetoed legislation and said he supports the idea but not the language, and that may well be the fate of Lavern's Law. But, for now, there is still some chance the governor can get to "yes" if chapter amendments that close some of the concerning loopholes can be added without losing legislative support.

The bill remains under review by the governor's counsel, said Rich Azzopardi, a spokesman for the governor.

DeFrancisco said the governor's reluctance is harming the bill's chances.

"There's discussions, but I don't hold a heck of a lot of hope out for the discussions because I think the governor's office is pulling back substantially on what we thought he'd be willing to do," DeFrancisco said.

The bill stands little chance of being signed without the changes, he added.

Lavern's Law passed at the very end of the legislative session in June, surprising many observers who thought it had little chance because it was opposed by powerful health care interests.

The health care industry had hoped for a veto but soon realized the politics were not in their favor. They suggested a veto with a blue-ribbon commission to study the issue, but that idea never got off the ground.

Signing an amended bill would be the next-best option for hospitals and physicians.

The legislation is named for Lavern Wilkinson, a 41-year old woman from Brooklyn who died in 2013. Her doctors, according to the New York Daily News, failed to tell her a chest X-ray they took in 2010 showed a small, suspicious mass on her right lung. By the time she learned of the doctors' error, the statute of limitations to sue had expired.

The bill seeks to address that problem by beginning the clock when the patient learns of the error, not when the error was made.

Cuomo, in 2016, said he understood the need for the measure.

But the bill (S6800) has two big problems for the health care industry.

The first is that it would allow patients to sue for misdiagnoses going back seven years, which has hospitals worried about liabilities from incidents that had already occurred. Hospitals have not reserved funds for these potential claims, nor have malpractice insurers.

The second is that the language of the bill does not do enough to ensure that this only applies to cancer, they fear.

A draft of new language has been circulated and reviewed by hospital and trial lawyer lobbyists, but no agreement has been reached.

De Blasio told Orthodox Jews he felt 'betrayed' by lack of cooperation over metzitzah

By DAN GOLDBERG

On a Friday in March, representatives of the Orthodox Jewish community went to Gracie Mansion to meet with Mayor Bill de Blasio, who was angry over what he felt was a breach of trust, according to a letter signed by three rabbis obtained by POLITICO.

The meeting was a last-ditch effort to salvage a crumbling compact between City Hall and the Jewish community regarding metzitzah b'peh, the controversial circumcision ritual that involves the practitioner, a mohel, orally sucking blood away from the wound, and which took place two days after the health department reported the year's first — and only — case of neonatal herpes associated with the practice.

It was the first publicly reported case since 2015 when the Board of Health rescinded a Bloomberg-era requirement that parents sign a consent form alerting them to the dangers of placing an adult mouth on an infant's open wound.

As part of agreeing to repeal that rule, the de Blasio administration said a mohel must voluntarily be tested for herpes if a baby contracted the virus. If the mohel's strain matched the baby's, the mohel would be banned from performing circumcision for life.

But the deal fell apart almost immediately, according to the letter.

“Your honor, please know that we never refused to honor that agreement,” the rabbis wrote. “Soon after our meeting ... we followed up with the city to work on its implementation, only to be told by a city official that the health department refused to commit to its terms.”

The letter was obtained via a Freedom of Information request filed in March. The city provided the three-page letter to POLITICO on Dec. 26.

The mayor, at the time, was saying that the Orthodox community was not cooperating with the city, an assertion community members said they could not believe they were hearing.

“The community was in shock that was how it was being portrayed,” said one person privy to the conversations between the mayor and representatives of the community, who asked for anonymity to speak candidly about private conversations. “This seemed to be an alternate reality. We were all going along thinking this was the protocol, and almost immediately thereafter the health department pulled out.”

The disagreement was over how the test would be conducted. The Orthodox community said it believed all had agreed to DNA-based testing while the health department said DNA evidence was not needed to determine whether a mohel should be prohibited from the practice.

Nothing had ever been put in writing and each side accused the other of bad faith.

At the Gracie Mansion meeting was Simcha Eichenstein, whom the mayor had appointed as a liaison to the Orthodox community, Deputy Mayor for Health and Human Services Herminia Palacio, Peter Hatch, Palacio’s chief of staff, Kevin O’Brien, deputy chief of staff, and Zach Carter, the city’s corporation counsel.

De Blasio demanded the names of four mohels associated with cases during the past two years, but was rebuffed.

That weekend, the health department released a statement saying the community was not living up to its end of the bargain and it was going “back to the drawing board [to] start over.”

The letter from the rabbis, written the following day, accuses the health department of engaging in a 12-year attack on a thousand-year old religious practice, and begs the mayor to reconsider.

The rabbis said they were confused by de Blasio’s anger at them when it was his own health department that violated the agreement.

“City officials were well aware that the rescission of the regulation occurred while the agreement was set aside, due solely to the health department’s rejection of its terms,” the letter said. “Why are we being faulted for the health department’s going rogue, and why are the city’s communications people feeding such distortions to the media?”

The mayor, who won the support of the Orthodox community in Brooklyn during the 2013 Democratic primary by signaling his intent to repeal the Bloomberg-era rule, did not respond to the three rabbis who sent the letter.

Health Commissioner Mary Bassett ordered two mohels to stop performing metzitzah b'peh. The city has never identified who they are. A spokesman for the health department said no violations of the order have been issued.

Read the letter [here](#).