Cover Story

Clearing the haze on medical marijuana

To say there’s confusion about Michigan’s new medical marijuana law is an understatement.

Last year, Gov. Rick Snyder signed into law a bill designed to clarify the ambiguous and problem-laden 2008 legislation that allowed medical marijuana use in the first place. Even before the bill took effect on Dec. 20, 2016, the questions came rolling in.

From the western end of the Upper Peninsula to the southeast corner of the state, township officials everywhere are asking, what does the law mean for us? What’s lawful now? What isn’t? And what steps do we need to take right away?

MTA Legal Counsel Catherine Kaufman, attorney at Bauckham, Sparks, Thall, Seeber and Kaufman, PC, has been bombarded with questions in the months since the Medical Marihuana Facilities Licensing Act (MMFLA), Public Act 281 of 2016, was passed. Whether it’s at a training session or in her office, she hears from township officials all over the state. They want to take action, and they want to know, if our township doesn’t want a medical marijuana facility, what do we need to do?

The short answer is, nothing. If your board doesn’t want a medical marijuana facility in your township’s borders, or you just aren’t sure yet, you don’t need to do a single thing to keep one from legally setting up shop in your community. It’s only if your board chooses to have a facility that an action is required. Under the new medical marijuana law, townships and other local units have complete control over whether a facility ever locates in their jurisdiction. No facility, person or business can force your board to change its mind.

MTA’s Government Relations team worked countless hours to ensure that the legislation kept the process as easy as possible for townships. While it won’t hurt your township to adopt a moratorium or a banning ordinance to state that the township will not allow any of the new medical marijuana facilities, it isn’t necessary.
There seems to be a lot of confusion about what exactly the new medical marijuana act means,” Kaufman said. “A lot of people in the communities are missing the fact that it’s up to the municipality to decide if they even want it.”

Your township board might already know, one way or another, where it stands in the medical marijuana debate. But regardless of whether you want any facilities or not, every township should understand the new law, your township’s authority and how the licensing process works. If your board is approached by an applicant demanding that you adopt an ordinance or approve their license, you’ll be able to separate fact from fiction and know your township’s true responsibility.

Designed to tame the chaos
Medical marijuana cultivation and use was authorized in Michigan after voters approved a ballot initiative called the Michigan Medical Marihuana Act (MMMA) in 2008. The initiative didn’t truly legalize marijuana for medicinal use, said Robert Hendricks, attorney at Wrigley, Hoffman & Hendricks, P.C., and secretary treasurer of the State Bar Association’s Marijuana Law Section. Instead, it provided patients and caregivers immunity from prosecution as long as they meet the law’s requirements, as well as a defense if they were prosecuted.

Under the 2008 law, a physician could determine that medical marijuana would help to alleviate symptoms for a patient under his or her care. The physician doesn’t write a prescription—which is illegal—but fills out a form recommending medical marijuana and submits it to the Michigan Department of Licensing and Regulatory Affairs (LARA). If the form is properly filled out, and a fee is submitted, LARA
Medical marijuana cultivation and use was authorized in Michigan after voters approved a ballot initiative called the Michigan Medical Marihuana Act in 2008. The act provided patients and caregivers immunity from prosecution as long as they meet the law’s requirements, as well as a defense if they were prosecuted.

The problem is the 2008 law only officially recognizes patients and caregivers. That means either the patient can be authorized to grow marijuana, or the caregiver grows marijuana for a maximum of five other patients and himself or herself, up to 72 plants.

Retail centers, known as provisioning centers or dispensaries, have popped up throughout the state as well, but none of them are lawful under the MMMA, Hendricks said. Some communities have decided they don’t want to fight the provisioning centers, or local prosecutors won’t prosecute if the centers sell to patients who have cards. Other communities are vigorously enforcing the law, actively shutting down centers and seizing property. The law was being enforced so unevenly throughout the state that one lawmaker referred to it as a “Wild West” scenario.

“What we have is this mess,” Hendricks said. “We don’t have a mechanism under the MMMA to provide an easy, safe and reliable means for medical marijuana to get into the hands of patients who need it.”

The MMMA was the subject of multiple lawsuits, and various questions came before the Michigan Supreme Court eight times. Judges said the law had too many ambiguities and holes that left questions unanswered. The Legislature worked for years to craft bills that could address these issues—and get the necessary votes. It took years of meetings, negotiations and amendments until finally, in the fall of 2016, the MMFLA was signed by Gov. Rick Snyder. The law is meant to provide regulations for what kinds of facilities are allowed and how they’re licensed, while the MMMA continues to remain in effect. Any gaps that remain are expected to be filled as an advisory panel creates administrative rules, Kaufman said.

While the law took effect Dec. 20, 2016, it won’t be implemented until Dec. 15, 2017, due to a 360-day delay included in the legislation. It was tie-barred to PA 282 of 2016, which established a seed-to-sale tracking system, as well as PA 283 of 2016, allowing medical marijuana to be used in edible or topical forms that are currently illegal.

Local control

The most important piece of PA 281—and what MTA fought hard to ensure its inclusion—is that NO ACTION is required if a municipality doesn’t want a medical marijuana facility in your township. You don’t need to adopt a moratorium, pass a resolution or approve an ordinance in order to keep these facilities out. Whether you know you don’t want a provisioning center, grow operation or other facility, or you just aren’t sure yet, your best bet is to simply do nothing.

MTA worked with lawmakers, LARA, the governor’s office and other local government associations for months to ensure that the final law didn’t just give locals a say in whether a facility received a license. The Association relentlessly advocated to ensure that if a township, city or village didn’t want a medical marijuana facility, no action was required of them. Over years—and multiple legislative sessions—committees discussed varying versions of the bills, some of which would have forced townships to opt out by passing an ordinance if they didn’t want a medical marijuana
facility. MTA negotiated to make sure that didn’t happen. The final law instead ensures that townships aren’t left frantically rushing to pass an ordinance before a facility is licensed in their jurisdiction.

“All over the state, people are saying they feel more comfortable adopting a moratorium or doing something,” Kaufman said. “No response is wrong. But we tried to make it simpler than that.”

Only townships that DO want a state-licensed medical marijuana facility are required to take action. Your township would “opt in” by passing an ordinance specifying not only what type of facility you would allow, but also how many. You can pass an ordinance at any time, but the state will not issue any facility licenses before Dec. 15, 2017.

Once the MMFLA is enforced, LARA will not consider a license application from any facility wanting to locate in your township if you don’t have an ordinance opting in. No facility can force your township to adopt an ordinance if your board does not want one. Opting in is completely up to your township board, Kaufman said.

It is also important to note that your township board does not issue licenses for medical marijuana facilities. Only LARA can do that. Your township’s role in the application process is simply to provide the opt-in ordinance and any related zoning ordinances to LARA when a facility applies for a license. If your township is approached by a potential medical marijuana facility, you can certainly put them on a board meeting agenda and listen to a presentation. However, your township can only decide whether any facilities are allowed, what kinds and how many. You cannot decide which particular facilities or applicants can be licensed.

Your township should also remember that any medical marijuana facilities that exist as of this publication are unlawful—even if your township passes an ordinance allowing them. That’s because LARA has not issued any licenses yet and will not do so prior to Dec. 15, 2017.

Five classes of licenses
The MMFLA picks up where the previous law left off. Where the MMMA only includes patients and caregivers, the new law outlines five classes of facilities that can receive medical marijuana licenses. Your township can choose to allow any, all or none of these classes.

Perhaps the most well-known class is for provisioning centers, also commonly referred to as dispensaries. This refers to any commercial property where marijuana is sold to registered qualifying patients or caregivers.

A Class A, B or C licensed grower would be permitted to have up to 500, 1,000 or 1,500 plants, respectively—a major increase from the current maximum of 72 plants for a caregiver growing marijuana for five patients and himself or herself. The marijuana could then go to a processor—the third type of facilities—which extracts resin from the marijuana or creates a marijuana-infused product.

A major part of the law is testing marijuana for safety, contaminants and cannabinoids. This would be done at a safety compliance facility, the fourth type of facilities. This commercial entity would operate similarly to a lab, and would receive marijuana from another facility and conduct tests on the substance.

Marijuana could not just be driven from place to place in the back of a car. The law requires that it be transported between facilities for a fee by a secure transporter, the fifth type of facilities.

The current system of caregivers and patients will continue to exist as is. However, patients will have more options for where they buy their medical marijuana. The goal is also to provide them with a safer, purer, more accessible product.

How the licensing process works
If your township does not pass an ordinance allowing state-licensed medical marijuana facilities, you don’t need to worry about rejecting applicants for a license. However, if you do pass such an ordinance, you’ll need to provide information to the state when someone applies for a license.

An applicant must notify their local unit that they’re applying for a license by registered mail within 10 business days of filing their application with the state. Then, within 90 days, your township must provide the state licensing board with a copy of its authorizing ordinance and of any relevant zoning regulations or ordinances.
Again, your township doesn’t have a say in whether or not the applicant receives a license. In the case of a renewal, however, you’ll have an opportunity for input. A state operating license is a revocable privilege, and it’s explicitly not a property right, meaning no one is automatically entitled to be licensed. The license must be renewed every single year, and if your township isn’t happy with the facility, you can submit your written input for the licensing board to consider.

Local units have been told that state licenses won’t be easy to get, and regulations will be strict, Kaufman said. The hope is that because licenses could be hard to come by, facilities will want to comply with the local regulations.

State licensing will mean another benefit for local units—you’ll know exactly where every medical marijuana facility is, Kaufman said. And if one pops up that isn’t on the list of licensed facilities, you’ll know it isn’t lawful and can report it to the state. However, local units still will not be notified of registered patients or caregivers in their jurisdiction.

The state will track its license-holders and monitor for compliance using a confidential, Internet-based monitoring system. This is required by the Marihuana Tracking Act, which was enacted at the same time as the MMFLA and creates a seed-to-sale monitoring system. LARA will use this system to verify registry identification cards, track marijuana transfers and verify that a transfer won’t exceed the authorized limit for a qualified patient or registered primary caregiver.

**How can townships regulate?**

If your board decides to adopt an ordinance authorizing medical marijuana facilities, it’s a good idea to also adopt companion regulations. Your ordinance could address issues such as zoning, setbacks from schools and other areas, buildings, noise and lights. It’s possible that LARA’s administrative rules could take care of any or all of these items, but zoning ordinances could help tackle concerns in the interim. Local ordinances are prohibited from regulating the purity or pricing of marijuana, and they can’t interfere or conflict with statutory regulations for licensing the facilities.

Some communities have complained about the physical appearance of medical marijuana provisioning centers. While it may be possible to regulate this through zoning, townships should use caution, Kaufman said. Your board must treat all commercial or industrial entities equally and can’t have a separate set of regulations for provisioning centers. Instead, your township could create provisions for aesthetics, signs and other aspects in its zoning ordinance for specific districts.

“If you only have specific regulations for dispensaries, that will be difficult to support legally,” Kaufman said.

Your township can then enforce its zoning, even though the facilities are licensed by the state. The MMFLA allows local units to recoup administrative and enforcement costs through an annual, nonrefundable fee of up to $5,000. However, this fee must be commensurate with the amount it costs to enforce your zoning and can’t just be a blanket fee, Kaufman said. You need to track your costs in order to justify your fee.

**So you’re thinking about allowing a medical marijuana facility**

Should your township allow medical marijuana facilities? There’s not necessarily a right or wrong answer to that question. Your township’s response will depend on your land use and demographics—and the desires of your residents and board.
Some municipalities are considering an authorizing ordinance for the possible economic benefit. New facilities would pay property taxes to help boost your township’s bottom line—and possibly fill vacant buildings currently off the property tax roll. They could also create jobs—a Class C commercial grower could potentially employ as many as 10 full-time workers, Hendricks said. Townships with vacant buildings or lots could see their empty spaces filled by tax-paying medical marijuana businesses instead.

“There will be economic activity and job creation,” Hendricks said. “This could be a great opportunity.”

Townships with state-licensed medical marijuana facilities would also receive a portion of the 3 percent tax all provisioning centers will be charged from their gross retail receipts. Townships with facilities within their jurisdictions will receive 25 percent of that tax revenue, in proportion to the number of facilities there.

For agricultural communities, a growing operation may seem like a good use for available land. Still other communities believe medical marijuana brings relief to those suffering from certain health problems and want patients in their township to have convenient access.

At the same time, there are negative aspects to consider as well. Kalamazoo Charter Township (Kalamazoo Co.) Police Chief Tim Bourgeois has a 40-year background in law enforcement, including extensive experience in undercover narcotics. He cautions that even the most law-abiding facilities can attract associated crime. He referred to a white paper published by the California Association of Chiefs of Police, which found that patients often carry cash to provisioning centers and are targeted for robberies on their way into the facility, or on their way out when they’re carrying marijuana. The paper also found problems with patients legally purchasing marijuana only to sell it to those who aren’t qualified patients.

“They measured a statistically significant increase in crime in the geographic area around dispensaries,” Bourgeois said.

Bourgeois also reminds townships that while medical marijuana is shielded from state prosecution, it still has a high illicit value. Any state-licensed medical marijuana facility is at risk of armed robbery, just as any other business selling high-dollar items is also at risk. This should be considered as townships look at their zoning ordinances. It’s important to remember, though, that different facilities carry different levels of risk, and they are not guaranteed to attract crime.

Neighbors of current caregivers or patients growing plants sometimes complain of the smell as well as generators or lights that run all night long. While these issues can be addressed with a nuisance ordinance, Kaufman said some local units have a history of distrust with medical marijuana operations and are already wary of facilities. This relationship could be improved by the new law—local units will know where their licensed facilities are, and their authority will be clearly defined. At this point, however, much is uncertain simply because it’s uncharted territory for Michigan.

**Next steps**

Even if you think you know where your township stands, it wouldn’t hurt to at least consider the possible benefits of a medical marijuana facility, Hendricks said.

“I encourage officials to be thoughtful, to understand and ask questions about what this means,” he said. “Don’t immediately jump to the conclusion that this is a bad thing, but be open to the opinions and voices of your citizens.”

Some township officials may feel pressured to make a decision, and to make one right now. But there’s no reason
not to take your time and think through the issue. While you can pass an ordinance authorizing state-licensed medical marijuana facilities now, that doesn’t mean you need to do it, even if you think your township wants the facilities.

Townships are still waiting for LARA to release its administrative rules, which could help shape zoning and nuisance ordinances for local units that allow facilities. And at this point, no sample ordinances have yet been written to provide townships with guidance.

If provisioning centers have operated in your township before, it’s likely they’ll want to continue, or start up again. Don’t be surprised if facility representatives show up at board meetings to lobby for an authorizing ordinance from your board. When this happens, you may feel pressured to act. But, Kaufman says, that pressure is purely manufactured—you have plenty of time to decide.

Bethany Mauger, MTA Staff Writer

The straight dope

MTA has additional resources and information to help township officials navigate the often-confusing arena of medical marijuana.

At our 2017 Annual Educational Conference, coming to Lansing in April, you can hear from experts—including attorneys Robert Hendricks and Catherine Kaufman, featured in this article, along with representatives from the Michigan Department of Licensing and Regulatory Affairs—at a panel “Medical Marijuana Update” discussion. The session will be held Wednesday, April 12, from 1:30 to 2:45 p.m. (exact location will be announced in the Conference program received on-site).

Visit our “Medical Marihuana Act” Web page on the members-only section of www.michigantownships.org. After logging in, access via the “Index of Topics” under the “Answer Center” tab. This page includes links to the medical marijuana public acts, synopsis of recent medical marijuana court cases, white papers and more.

You can also find MTA’s extensive “New Medical Marijuana Laws Q&A,” featuring commonly asked questions, including “What is legal today?”, “What is illegal today?”, and “Don’t you know how to spell ‘marijuana’?”