

Tips/Guidance for Requesting Florida Office of Medical Marijuana Use (OMMU) Internet Ad/Marketing Approval

This white paper provides a background of important features of Florida's medical marijuana (MM) law and tips for newspapers to assist in easier processing and timely OMMU review of MM ad copy. It is not intended to provide legal advice on Florida's MM law, and, except where specifically required by Florida law, this guidance is not mandatory for newspapers. Responsibility for compliance with Florida law – and especially where pre-approval of ads is required – should be placed on the advertiser to the extent possible. Entities engaged in the MM business are much more likely to be familiar with the nuances of these regulations. Finally, although Florida and many states have legalized cannabis in varying degrees, it remains an illegal Schedule I controlled substance under Federal law.

Background

Under Florida's MM law, qualified patients with certain listed conditions are allowed to use "marijuana delivery devices" such as cannabis drops, edibles, pills, oils, and smokable and vaporized forms of cannabis upon a doctor's approval and certification. Other delivery devices containing marijuana oil are allowed including oral syringes, droplets, nasal sprays, creams, and capsules.

The law sets up a licensure system for "medical marijuana treatment centers" and their associated "dispensing facilities or locations." Such "centers" (also called "dispensaries") are the sole source from which qualified patients can legally obtain MM in Florida. Licensed dispensaries can be found at: <http://www.floridahealth.gov/programs-and-services/office-of-medical-marijuana-use/medical-marijuana-treatment-centers/index.html>.

Prohibitions Under Florida's MM Law

General: MM can only be dispensed to Florida residents listed on the state's MM registry.

It is a crime to use MM on public transportation or public places, on school grounds, or in buses, vehicles, aircraft, or motorboats (except low-THC cannabis, in some cases).

Minors (younger than 18 years of age) are prohibited from purchasing MM directly. They can access it only through qualified caregivers (who, among other criteria, must be age 21 or over). Also, DOH can only issue ID cards to a minor if the parent or legal guardian (who must be a Florida resident) consents.

Smokable MM: In 2019, the law was amended to allow a qualified physician to determine that smoking is an appropriate route of administration for medical marijuana. Under the law, the smokable MM must remain in its original plain, white packaging. MM may not be smoked in public or an indoor workplace. A private party may restrict or limit smoking or vaping medical marijuana on his or her private property. Patients under the age of 18 may not obtain a certification for marijuana for medical use by smoking unless the patient is diagnosed with a terminal condition and a second physician, who is a board-certified pediatrician, agrees with the determination.

Advertising

Generally, a dispensary may not engage in advertising that is visible to members of the public from any street, sidewalk, park, or other public place. However, it may engage in “Internet advertising and marketing” under the following conditions:

- All advertisements must be approved by OMMU. Proceeding with an ad prior to receiving approval may subject the dispensary to penalties and fines.
- An advertisement may not have any content that specifically targets individuals under the age of 18, including cartoon characters or similar images.
- An advertisement may not be an unsolicited pop-up advertisement.
- Opt-in marketing must include an easy and permanent opt-out feature.

Note: DOH has not finalized a stand-alone ad rule. The DOH rule eventually will be finalized as Rule [64-4.022](#), “Medical Marijuana Treatment Center Advertising and Signage.”

Seeking OMMU Advertising Approval

Request Form and Timelines

Until a final stand-alone rule is finalized, for advertising approval submissions OMMU follows the variance request procedures and timelines contained in Rule 64-4.023 and Florida law, s. 120.542. (Form DH8019-OMMU-11/2018, “Medical Marijuana Treatment Center Variance Request.”) The applicant completes each section of the form that is applicable, and attaches all required documentation based on each section’s requirements. Also, applicant must:

- Label any attachments using the names of each applicable section.
- A variance must be submitted in portable document format (“PDF”).
- If mailed to the department at the address listed below, a copy of the variance in PDF format must be included on a USB Flash Drive.
- A variance must be submitted either electronically to: OMMULicenseOperation@flhealth.gov or mailed to The Office of Medical Marijuana Use at: 4052 Bald Cypress Way, Bin M-01, Tallahassee, Florida 32399.

For advertising requests, the following info is required:

- Copy of the proposed ad.
- Example of the proposed dispensing location sign, including location of the facility site plan. [Note: The MM law requires the sign to be affixed to the outside or hanging in the window of the premises which identifies the dispensary by the licensee’s business name, a department-approved trade name, or a department-approved logo.]
- Description of the locations and method of dissemination of each ad.
- Documentation that the proposed ad is not visible to members of the public from any street, sidewalk, park or other public place.
- Documentation that the proposed internet advertising is not an unsolicited pop-up adv and contains an easy and permanent opt-out feature.
- Documentation that the proposed ad does not have any content that specifically targets individuals under the age of 18.
- Any contracts or agreements related to the proposed ad.

Within 30 days after receipt, OMMU will review the variance request and request all additional information that it is permitted to request. Within 30 days after receipt of such additional information, OMMU must review it and may request only that info. needed to clarify the additional information. OMMU must decide on the application within 90 days after receiving the original request.

As a practical matter, the above rule means that if the application is not initially complete or submitted in the proper form, or raises issues that need additional clarifying information, the application process may be delayed. This includes issues the application might raise regarding whether: the target audience is appropriate, the advertised use is recreational in nature, the product is directed to children, there are unwarranted health claims, it is an approved product, and the legality of the route of administration.

Tips to Help Quicker Processing of Variance Request

Applications that are incomplete or require further clarifying information may result in delayed processing by OMMU. As a result, advertisers may wish to consider the following when creating ad copy and completing and submitting a variance request to OMMU:

General: Be knowledgeable of Florida's MM law including the above forms/prohibitions/criteria.

It is generally recommended that dispensary ads be "benign" in nature, that is, providing locational and biographical information, offering only products legal under the Florida MM law, and providing directions about access for qualified patients. Generally, proposed ads should avoid promotion of recreational use, overconsumption, pricing discounts, happy hours, or glamorizing products such as linking sexual images to consumption.

Of special concern is avoiding MM ads that target minors (under 18 years of age) or use techniques appealing to young people like cartoon characters, symbols, candy resemblances (gummy bears, etc.), or music. If the internet ad references or links to the advertiser's website, ask the advertiser whether the site is or can be geo-located to the state of Florida and to viewers age 18 or older.

Include disclaimers on ads such as: 1) "Medical marijuana is available in Florida but it remains illegal under Federal law;" 2) "Minors may not purchase and dispensaries may not dispense medical marijuana to minors under Florida law;" and 3) if applicable, "This product is a marijuana delivery device intended for medical use from a dispensary and available to qualified patients."

Include the dispensary's DOH license/registration number and confirm they are on DOH list. Add the word "qualifying" before the word "condition(s)" whenever it is used.

Edibles: The ad should not promote edibles that violate prohibitions contained in Florida's MM law, which are as follows: edibles can only be made from marijuana oil (and no other form of marijuana). Edibles may not contain more than 200 milligrams of THC and a single serving portion may not exceed 10 milligrams. Edibles may not be attractive to children; be manufactured in the shape of humans, cartoons, or animals; be manufactured in a form that bears a reasonable resemblance to products available for consumption as commercially available candy; or contains color additives.

Smokable MM: Be aware of the law around this form of delivery, summarized above.

Health claims: It will be up to the advertiser to justify its health claims; caution is advised as unsubstantiated health claims may lead to information requests and delays.