

State Residency “Sunset Clause” Proposal

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Overview

A Sunset Clause (or Sunset Provision) is a measure within a statute, regulation or other law that provides for the law to cease to be effective after a specified date, unless further action is taken to extend it. A measure of this nature can be used to protect local participation while avoiding constitutional risk, within the context of licensing through the Medical Psilocybin Program.

By limiting program participation, manufacturers, testing facilities and service providers with long term residency in New Mexico will be given an equitable opportunity to establish their role within the Medical Psilocybin Program.

With high profile programs such as this, national attention is often developed to attract venture capital and multi-state organizations who have the capability of monopolizing a local economy. Results of this can be detrimental to State residents; Local participants often lack the levels of capital and regulatory experience held by non-resident commercial operators. Additionally, early licenses can create long-term structural advantages, whereas the spirit of the law is to serve all New Mexico residents.

Precedent

Under Oregon Psilocybin Services statute (including but not limited to ORS 475A.290 and ORS475A.305), precedent is established through the following clause:

“(c) Must, until January 1, 2025:

(A) If the direct owner of the business operating or to be operated under the license is a legal entity, provide proof that more than 50 percent of the shares, membership interests, partnership interests, or other ownership interests of the legal entity are held, directly or indirectly, by one or more individuals who have been residents of this state for two or more years;

*(B) If the direct owner of the business operating or to be operated under the license is a partnership that is not a legal entity, provide proof that more than 50 percent of the partnership interests of the partnership are held, directly or indirectly, by one or more individuals who have been residents of this state for two or more years; **and***

*(C) If the direct owner of the business operating or to be operated under the license is an individual, provide proof that the individual has been a resident of this state for two or more years; **and”***

Proposed Measure

I. Applicability

This measure applies to applicants and holders of the following licenses issued under the New Mexico Department of Health Medical Psilocybin Program: Manufacturer, Testing Facility, Therapy Facilitator.

II. Temporary Requirement

Notwithstanding any other provision of law, and until January 1st, 2029, an applicant for a license subject to this measure must demonstrate compliance with the residency and ownership requirements set forth in this measure.

III. Individual Applicants

If the applicant is an individual, the applicant must provide proof that the individual has been a resident of the State of New Mexico for a minimum of 24 months immediately preceding the date of application.

IV. Entity Applicants

If the applicant is a corporation, limited liability company, partnership, association, trust, or other legal or commercial entity:

a. Ownership Requirements

More than 51% of the ownership interest in the applicant must be held by one or more individuals who have been residents of the State of New Mexico for a minimum of 24 months immediately preceding the date of the application; and

b. Control Requirements

The individuals described in Subsection (a) must possess actual authority to direct the management, policies, and operations of the applicant, whether through voting rights, management authority, contractual rights, or other indicia of control, as determined by the New Mexico Department of Health

V. Anti-Circumvention

New Mexico Department of Health may deny an application, refuse renewal, or take disciplinary action if it determines that an ownership, management, financial, or contractual arrangement has been established for the purpose of evading or circumventing the requirements of this measure, including but not limited to nominee arrangements, management agreements, profit-sharing agreements, debt instruments, or options conveying control.

VI. Measure Duration

This measure is set to expire effective January 1st, 2029. On or after this date, no residency, ownership, or local participation requirements shall apply to licensure under the Medical Psilocybin Program, unless expressly reauthorized by New Mexico Department of Health.