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## New Mexico's largest medical pot producer suing Health Department

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Ultra Health, New Mexico's largest producer and seller of medical marijuana, is challenging the way the state regulates makers of edibles, salves, lotions and other cannabis-infused products for sale in dispensaries.

A lawsuit challenging the state Health Department's policies for licensing these manufacturers asserts the law that created the state Medical Cannabis Program does not actually authorize the licensing of such businesses.

However, the lawyer representing Sandoval County-based Ultra Health, state House Speaker Brian Egolf, D-Santa Fe, said Monday the suit is not intended to put the manufacturers out of business.

“The goal is to come up with a fair fee structure,” he said.

Under the current law, licensed producers grow and cultivate the marijuana. The producers transport raw plant material to manufacturers who in turn make candy, baked goods, beverages or products such as pills, salves or tinctures to be sold in the producers' dispensaries.

The suit says Ultra Health — which operates more than a dozen dispensaries statewide — is suffering “direct and immediate injury” because producers like Ultra have to pay fees of up to \$90,000 a year, while manufacturers of cannabis-infused products only have to pay \$1,000 a year.

The program has licensed 14 manufacturers of such products, according to the Health Department's website.

Unlike Ultra Health and the 34 other licensed medical cannabis producers in the state, manufacturers don't have to be nonprofit organizations.

Ultra Health is owned by Duke Rodriguez, who was Human Services secretary under former Gov. Gary Johnson.

Asked Monday about the suit, Health Department spokesman David Morgan said his agency “has not been served notice of the lawsuit and as general matter, we don't comment about pending litigation.”

Egolf said he would like to see a system in which a manufacturer would have to work under one of the licensed producers.

He also noted that the law only protects licensed producers, patients approved by the Health Department for the program and patient caregivers against criminal and civil penalties related to marijuana. Manufacturers do not enjoy such protections under the state law, Egolf said.

Also, Egolf said, manufacturers are not subject to the same level of regulation, including frequent audits, as cannabis producers.

Vince Galbiati, executive director of the Albuquerque-based New Mexico Cannabis Chamber of Commerce, said his organization — which includes cannabis producers, manufacturers and others connected to the fledgling state medical marijuana industry — has not taken a position on the lawsuit, though it's expected to be a major topic of discussion at the group's weekly meeting Tuesday.

“All I can say right now is that the manufacturers play a pivotal role in the industry,” Galbiati said.

Ultra Health has been successful in two other recent lawsuits it filed against the Health Department.

Last month, state District Judge David Thomson ruled that a department regulation limiting producers to 450 plants is arbitrary. He gave the agency four months to study the issue and establish a new plant limit.

That case was brought by Ultra Health and a Los Lunas woman who uses cannabis oil and medical marijuana products to treat her daughter’s rare form of epilepsy. The woman has said the treatments call for a significant amount of cannabis material and that she has a hard time finding a licensed producer who can provide enough.

In another suit, state District Judge Louis McDonald of Bernalillo ruled that the state couldn’t block Ultra Health from opening two already-built dispensaries in Española and Los Lunas. The department’s reasons for denial “are found neither in the [medical marijuana law] nor the regulations,” McDonald wrote.

The Medical Cannabis Program has exploded in popularity in the past year. According to Health Department statistics, there are 66,725 active patients in the program as of Nov. 30 — more than 21,000 more than at the same time last year.

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