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Department of Public Health
Bureau of Health Care Safety and Quality
Medical Use of Marijuana Program

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Guidance for Municipalities Regarding the Medical Use of Marijuana
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The following information is provided to assist municipalities in addressing questions related to the marijuana for medical use. Additional information is available on our website at mass.gov/medicalmarijuana or by contacting our support center at (617) 660-5370 or medicalmarijuana@state.ma.us.

Department of Public Health Regulations & Local Laws or Regulations

Role of Municipalities. The Department of Public Health Regulations, 105 CMR 725.000, et. seq. (the “Regulations”)¹ implementing the Humanitarian Medical Use of Marijuana Act, Ch. 369 of the Acts of 2012 (the “Act”)² recognize the role of municipalities in adopting local laws and regulations regarding uses related to marijuana for medical use that are appropriate for their community.

Local Option. The Department does not, however, mandate any involvement by municipalities or local boards of health in the regulation of registered marijuana dispensaries (“RMDs”), qualifying patients with hardship cultivation registrations, or any other aspects of marijuana for medical use. 105 CMR 725.600(B).

Compliance with Local Law. The Regulations require RMDs and all other persons registered with the Medical Use of Marijuana Program to comply with all local ordinances, bylaws and regulations. 105 CMR 725.600(A). Nothing in the Regulations will be construed to prohibit lawful local oversight and regulation that does not conflict or interfere with the operation of 105 CMR 725.000. 105 CMR 725.600(B). For example, 105 CMR 725.110(A)(11) requires that an RMD must “[e]nsure that trees, bushes, and other foliage outside of the RMD do not allow for a person or persons to conceal themselves from sight...” Local ordinances or bylaws may not require landscaping that would conflict with this provision.

The Attorney General’s Office has issued decisions regarding bylaws or ordinances that it believes to conflict with state law, including a bylaw attempted to prohibit RMDs, a bylaw requiring all registered qualified patients within a municipality to register with the municipality, bylaws requiring personal caregivers or anyone engaged in home cultivation to register with local officials who are not law enforcement personnel, bylaws requiring a special permit for home cultivation, bylaws limiting home cultivation to a particular area in the community, bylaws prohibiting home delivery, bylaws requiring buffer zones around home cultivation sites, and bylaws requiring RMDs to comply with federal law. For

¹ <http://www.mass.gov/eohhs/docs/dph/regs/105cmr725.pdf>

² <https://malegislature.gov/Laws/SessionLaws/Acts/2012/Chapter369>

more information on the decisions of the Attorney General's Office regarding bylaws or ordinances regarding marijuana for medical use, please consult the website for the Attorney General's Office at <http://www.mlu.ago.state.ma.us/>.

Municipalities must use their best judgment in crafting local requirements, so as not to create a conflict with 105 CMR 725.000. When in doubt, the municipality should consult its Town Counsel or City Solicitor.

Buffer Zone. One opportunity for municipalities to exercise local control over the placement of RMDs in their community is the setting of a buffer zone. The Regulations, 105 CMR 725.110(A)(14), state:

A RMD shall comply with all local requirements regarding siting, provided however that if no local requirements exist, a RMD shall not be sited within a radius of five hundred feet of a school, daycare center, or any facility in which children commonly congregate. The 500 foot distance under this section is measured in a straight line from the nearest point of the facility in question to the nearest point of the proposed RMD.

The Department measures the distance from building to building rather than property line to property line. A facility is not, however, limited to a building. For example, a playground outside a school would be considered a facility where children congregate, so in that case the line would be measured from the edge of the playground to the nearest point of the building that would house the potential RMD. If a municipality enacts its local bylaw or ordinance regarding the buffer zone, it may also determine its own standard of measure.

The Department interprets a "facility in which children commonly congregate" to include facilities in which children are gathered for a particular purposes in a structured and scheduled manner or which are dedicated to the use of children, such as playgrounds, youth services programs, day care centers, youth sports facilities, dance schools, and gymnastic schools. It includes a private home housing a family day care center, but not a private home where children happen to live. It does not include other facilities, such as ice cream shops, where children may happen to congregate, but not in a structured, scheduled manner.

Municipalities may set their own buffer zone, but if they do not, the default buffer zone will be the 500 foot distance described in the Regulations.

Local Permitting. Municipalities are not required to wait for DPH to issue an RMD a Provisional Certificate of Registration before acting on local permit applications, but may elect to require an RMD to demonstrate that it has received such a registration first. Please note, however, that under the Regulations, 105 CMR 725.100(B)(5)(f), an RMD must submit architectural plans to the Department prior to construction or renovation of an RMD. Proceeding with construction or renovation without Department approval is done at the applicant's risk and any construction or renovation already performed may need to be changed at the applicant's expense.

Registered Marijuana Dispensaries

Vertically-Integrated System. In Massachusetts, the RMDs are required to be "vertically-integrated," which means RMDs grow and process their own marijuana, with limited exceptions, rather than purchasing marijuana from a supplier.

Non-Profit Requirement. Only an entity that is incorporated in Massachusetts as a non-profit corporation under M.G.L. c. 180 can apply to operate an RMD.

Retail v. Cultivation. An RMD may have a retail facility, as well as cultivation and processing operations. Some RMDs elect to do cultivation, processing and retail operations all in one location, which is commonly referred to as a “co-located” operation. An RMD may also choose to have a retail dispensary in one location and grow marijuana at a remote cultivation location. It may conduct the processing of the marijuana at either the retail dispensary location or the remote cultivation location. The remote cultivation location need not be in the same municipality or even the same county as the retail dispensary.

Multiple RMDs. A non-profit corporation may operate up to 3 RMDs. The retail dispensaries of one non-profit corporation may share a remote cultivation facility. Different non-profit corporations may not, however, share a remote cultivation facility with each other.

Amount of Marijuana. There is no specified numeric maximum amount that an RMD may have on its premises. The Regulations require that RMDs must limit their inventory of seeds, plants, and useable marijuana to reflect the projected needs of registered qualifying patients. 105 CMR 725.105(G)(1).

Number of RMDs per Municipality. It is up to a municipality to determine how many RMDs it deems appropriate for the community. The municipality may express that determination through granting or denying a request by an applicant for a letter of support or non-opposition. An RMD will not be permitted to proceed to the Inspections Phase if it has not obtained a letter of support or non-opposition.

Taxation. The Department of Revenue (“DOR”) has determined that the sales tax exemption for prescription medicine in G.L. c. 64H, § 6(1) applies to sales of marijuana and products containing marijuana to a qualifying patient or the patient’s personal caregiver pursuant to a written certification by a licensed physician. Any other supplies, educational materials or other items sold by the medical marijuana treatment center are subject to tax unless another exemption applies. For further information, please consult the DOR website: <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/directives/directives-by-years/2015-directives/dd-15-1.html>; or consult your Town Counsel or City Solicitor for further information.

Other Activities at an RMD. An RMD is defined as a non-profit entity “that acquires, cultivates, possesses, processes (including development of related products such as edible MIPs, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers.” An RMD is not a health care provider or a provider of general wellness services. Under the Regulations, 105 CMR 725.105(N)(7), an RMD may not sell any products other than marijuana, marijuana-infused products (MIPs), marijuana seeds, and other products such as vaporizers that facilitate the use of marijuana for medical purposes. RMDs may, however, conduct a patient education program in compliance with the Regulations, 105 CMR 725.105(K).

Hours of Operation. The Regulations do not specify particular hours of operation. Municipalities may set reasonable requirements in this regard.

Home Delivery. The Regulations permit, but do not require, home delivery to registered qualifying patients and personal caregivers within the Commonwealth.

Limitations on Entry. Only registered qualifying patients, personal caregivers, dispensary agents and authorized state and local officials may enter an RMD, with strictly limited exceptions.

Patient Choice. Qualifying patients may choose to purchase from different dispensaries from around the Commonwealth. RMDs are required to track purchases in the Medical Use of Marijuana Online

Registration System so that patients are not permitted to purchase more than the amount their physician has certified as appropriate for their debilitating medical condition.

Coordination with local law enforcement. The Regulations require RMDs to coordinate with local enforcement regarding panic alarms, providing hours of operation, after-hours contact information and access to RMD surveillance operations; as well as requiring dispensary agents to produce their Program ID Card to law enforcement upon request.

Certain issues must be reported to local law enforcement, often within 24 hours: diversion of marijuana; unusual discrepancies identified during inventory, theft, loss and any criminal action; unusual discrepancy in weight or inventory during transportation; any vehicle accidents, diversions, losses, or other reportable incidents that occur during transport; any suspicious act involving the sale, cultivation, distribution, processing, or production of marijuana by any person; unauthorized destruction of marijuana; any loss or unauthorized alteration of records related to marijuana, registered qualifying patients, personal caregivers, or dispensary agents; an alarm activation or other event that requires response by public safety personnel; failure of any security alarm system due to a loss of electrical power or mechanical malfunction that is expected to last longer than eight hours; and any other breach of security.

Ongoing Inspections. The Department will conduct ongoing inspections of RMDs after they open, including scheduled and unscheduled inspections. If local officials encounter issues with an RMD, they should contact the Medical Use of Marijuana Program at (617) 66-5370 or RMDcompliance@state.ma.us.

Annual Registration Renewal. RMDs are required to renew their registration annually with the Department.

The RMD Application Process

Overview. DPH will evaluate the applications received on or after June 29, 2015 on a rolling basis, with priority given to the review of applicants proposing to site an RMD in an Open County. Each successful applicant will be notified that they are authorized to proceed to the Inspection Phase, during which they may seek all required local permits, and when authorized by their community, commence building out the RMD. The Inspections Phase also includes evaluation of documentation prepared in compliance with the Regulations and guidance provided by the Department regarding the operation of a nonprofit RMD. After passing all applicable local and state inspections, an RMD may receive a Final Certificate of Registration.

Role of Municipalities. Municipalities should determine what local permits or licenses may be required if a RMD wishes to locate there, and consult their Town Counsel or City Solicitor if there are any questions about the required process.

Proposed Locations. As part of the application process, an RMD applicant will submit an *Application of Intent*, a *Management and Operations Profile*, and a *Siting Profile* in sequential order. An applicant must be formally invited by the Department in writing in order to submit a *Management and Operations Profile* or *Siting Profile*. An RMD applicant does not inform the Department of their proposed RMD location(s) until the time of submission of the *Siting Profile*.

Letters of Support or Non-Opposition. RMDs may approach municipal officials to acquire letters of local support or non-opposition, which is required for the *Siting Profile* portion of the application. An RMD is required to obtain a letter of support or non-opposition from its host community before it will be

permitted to proceed to the Inspection Phase. In terms of the evaluation, there is no difference between a letter of support or a letter of non-opposition. Either letter will satisfy the requirement.

If the applicant is proposing a retail dispensary location and a remote cultivation facility, the applicant must submit a letter of support or non-opposition from both municipalities. This letter may be signed by (a) the Chief Executive Officer/Chief Administrative Officer, as appropriate, for the desired municipality; or (b) the City Council, Board of Alderman, or Board of Selectmen for the desired municipality. The applicant's choice of (a) or (b) should be done in consultation with the host community. Each letter requires that particular language be included in the letter, as provided in Section C of the *Siting Profile*. If the applicant and the host community choose (b), please note that the template language requires the signor to state that there was a vote to sign the letter taken at a duly noticed meeting and to identify the date of that meeting.

Notification of Municipality. After receiving an invitation to submit a *Management and Operations Profile*, the applicant must Notify the chief administrative officer, or equivalent, and chief of police, or equivalent, of the proposed city or town in which an RMD would be sited, if applicable, and the sheriff of the applicable county, of the intent to submit a *Management and Operation Profile* and a *Siting Profile*.

Municipal Approval Prior to Opening. Before an RMD can open, it must comply with all local rules, regulations, ordinances and bylaws, in addition to all applicable state laws.

Home Cultivation

Eligibility: The Regulations allow for home cultivation, also known as “hardship cultivation” when a qualifying patient meets at least one of three criteria:

- Verified financial hardship;
- Physical incapacity to access reasonable transportation;
- Lack of an RMD within a reasonable distance.
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Until the Department announces the registration of home or hardship cultivators, qualifying patients and personal caregivers are permitted to engage in limited cultivation in compliance with the Regulations.

Where. Home cultivation may only occur at either the qualifying patient's or personal caregiver's primary residence, but not both.

How. Cultivation and storage must occur in an enclosed, locked area, not visible for the street or other public areas. Only an amount sufficient to provide the qualifying patient with a sixty day supply may be cultivated.

Online Registration System

Who. The Online Registration System provides online certification and registration for qualifying patients, as well as registration for physicians, personal caregivers and dispensary agents. Pediatric patients are registered through a paper process.

Accessible. The Online Registration System allows access for law enforcement 24 hours a day, 7 days a week.

Verification. The Online Registration System allows law enforcement to verify that an individual may legally possess marijuana.

Real-Time. The Online Registration System allows real-time updates of certification and registration information.

Secure. The Online Registration System has appropriate security and access limitations to protect sensitive or confidential information.

Additional Information. Further information regarding the Online Registration System may be found on the Medical Use of Marijuana Program website:

<http://www.mass.gov/eohhs/gov/departments/dph/programs/hcq/medical-marijuana/patients-and-caregivers.html>.

Public Records

Protection of RMD Security Information. Municipalities may receive information about RMDs in the course of the local permitting process that may compromise the RMD if disclosed.

Municipalities may refer to exemption (n) to the definition of “public records” in M.G.L. c. 4, s. 7, which provides that the following are exempt from disclosure as public records:

“(n) records, including, but not limited to, blueprints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation or other infrastructure located within the commonwealth, the disclosure of which, in the reasonable judgment of the record custodian, subject to review by the supervisor of public records under subsection (b) of section 10 of chapter 66, is likely to jeopardize public safety.”

Municipalities should consult with their Town Counsel or City Solicitor regarding Public Records laws and use their best efforts to keep confidential any information that, if released, may jeopardize public safety.