PUBLIC HEALTH DIVISION

Kate Brown, Governor

Rosa Klein
Legislative Coordinator
Public Health Division, Oregon Health Authority
971-673-1265, cell:503-803-4274
rosa.klein@state.or.us

Memorandum

To: **The Honorable Senator Ginny Burdick, Co-Chair**
The Honorable Representative Ann Lininger, Co-Chair

From: Steven A Wagner, MPH
Administrator, Center for Health Protection

Date: 11 May 2015

Subject: Follow up to questions from the May 4, 2015 meeting of the Joint Committee on the Implementation of Measure 91

The following information was requested by member of the Joint Committee on the Implementation of Measure 91 during the May 4, 2011 meeting. Since some of the questions and comments are related, answers are being grouped in categories.

Advisory Committees

OHA is looking at all of its advisory committees to review, update and refocus their mission. The Oregon Health Authority actively engages the Advisory Committee on Medical Marijuana (ACMM) on the administration of the Oregon Medical Marijuana Program. As we move forward with rules to implement expected statutory changes, OHA will look to ad hoc rule advisory workgroups to provide balanced advice on rules. We will seek advice from the ACCM on products from these workgroups.

Food Safety Inspections of Processors Creating Edibles

The Oregon Health Authority (OHA) is not an expert in the regulation of manufactured food. Further, the inspection of food service establishments (restaurants) is carried out by local Public Health Departments in each county, not OHA. In general, when both food service and food processing is conducted by the same facility the predominant activity will determine which agency (ODA or OHA) will license and inspect.

The Oregon Department of Agriculture (ODA) administers ORS Chapter 616 and governs food safety with regard to the production, processing and distribution of all food including milk, dairy products, shellfish, consumer commodities or commodities of agricultural origin and food establishments including commercial and domestic kitchens.

OHA could enter into a memorandum of understanding with ODA or local health departments to complete inspections for manufactured foods, however, under the current statutes, the responsibility for the food inspections would still reside with ODA unless exempted from the food statutes.

Possession of Concentrates

Concentrate production yields can vary depending on the strain used. If product (flower amount) is tracked to a processor to be made into concentrate, then the end product should be tracked as to where it goes. Unless a patient relinquishes his or her rights to the marijuana transferred to a processor, the patient should authorize any transfer to a dispensary. (Typically concentrates are sold in half gram and one gram quantities in dispensaries.)

Without a possession limit for concentrate on patients, a single patient could receive concentrate processed from the marijuana released by other patients. It would be legal for a single patient to receive and possess large quantities of concentrate; that patient could not be investigated for diversion. Possession limits for concentrates should allow a patient to receive all of the product produced from his/her plants but should not allow for the transfer of additional product.

Under Measure 91, you can possess up to 72 oz. of a marijuana product in liquid form and 16 oz. in a solid form and it's unclear whether a concentrate would fall into those categories. Oregon Department of Justice has asked the Joint Committee to create a definition of concentrate (non-dangerously made substance) and that the legislature set a limit on how much can be possessed. It may be that a 1 oz. cap should be placed on it, given that under Sec. 79 of Measure 91, possession of more than one oz. of extract would be a crime.

If possession limits are restored, different procedures could be required for transferring personal use amounts to patients, versus transferring a larger (or potentially any) amount to another processor or a dispensary. Regardless, processors should track the transfer of marijuana products.

Restrictions on Caregivers

A caregiver can have an unlimited number of patients. A caregiver is defined as "an individual 18 years of age or older who has ***significant responsibility for managing the well-being of a person who has been diagnosed with a debilitating medical condition*** and who is designated as such on that person's application for a registry identification card or in other written notification to the authority. "Designated primary caregiver" does not include the person's attending physician." OHA has not historically questioned a patient or caregiver as to whether the caregiver the patient has designated actually meets this definition. A caregiver and patient collectively (under current law) can possess 24 ounces of usable marijuana which would include concentrates, at any one time. As such, there is potential for diversion for caregivers that are designated for a large number of patients.

OHA would recommend that caregivers who are processors that are designated by more than 4 patients should only be able to transfer marijuana products to registered dispensaries. In addition, all caregivers with more than four patients should be required to report on their receipt of marijuana and transfers of marijuana as part of the marijuana tracking system. Currently, 40,792 patients have a caregiver:

- Caregivers with 1 - 2 patients: 98% (35,013)
- Caregivers with 3 - 4 patients: 1.4% (486)
- Caregivers with 5 - 10 patients: 0.5% (172)
- Caregivers with 11+ patients: 0.1% (40)

Thus, only 0.6% of caregivers would be impacted by this requirement. If instead of tracking, caregivers were limited to only four patients, 1017 patients would need of a new caregiver.

Estimates on the Amount of Marijuana Produced in Oregon

OHA does not have any data on the quantity of marijuana that is in the system. We do know that in April there were 45,488 grower cards issued (a grower gets a grower card for each patient). Since each grower may have 6 mature plants per patient at any point in time, this translates to at least 272,928 mature marijuana plants. Assuming the harvest of a plant could yield 3-10 pounds of usable marijuana, a harvest could yield between 818,748 to 2,729,280 pounds of usable marijuana. Only tracking of marijuana under a regulatory framework will provide a reasonable estimate of the amount of marijuana grown in Oregon.

Recommendations by Physicians

In order to ensure that a physician meets the definition of attending physician, the OMMP requires additional documentation, for example, that the physician has conducted a physical examination of the patient for which medical marijuana has been recommended. Informally, the program determined that the average patient caseload for primary care physicians is around 2200 and that it is unlikely more that 20% of adult patients would qualify and choose to have a medical marijuana registration card i.e. approximately 450 patients. Therefore, if the OMMP registration system shows a single physician to be the attending physician of record for more than 450 patients at any point in time, we will require the additional documentation to be submitted.

Once a physician has provided a recommendation for 450 patients, they are required to submit the additional medical documentation (unless an exemption has been granted). Internally,

- Staff is notified of the additional medical documentation requirement;
- The physician's name as it appears when selected in the database contains notice of the required additional medical documentation; and
- Additional checkboxes appear reminding staff of the additional medical documentation.

The submission of the additional medical documentation is checked every single time a patient submits an Attending Physician's Statement (APS) or chart notes from the physician. If the additional medical documentation is not submitted, the application is denied.

All future medical submissions from that physician, even if their caseload falls below 450 patients, require the additional medical documentation unless an exemption is granted.

Since implementation of this additional medical documentation requirement:

- 48 Physicians have reached the 450 threshold at some point (attached)
- 21 Physicians currently have 450 or more patients (attached).
- 3 Clinics have been approved for a clinic exemption to submitting additional medical documentation under OAR 333-008-0060 (5) (b).

Regulation of the practice of medicine is the responsibility of the Board of Medical Examiners and the names of the physicians exceeding 450 patients are public and have been provided to the Board.

Moratorium on Dispensaries

Applications from cities and counties with Moratoriums were received and processed by the program just as any other application throughout the past year. Some moratoriums lifted prior to the May 1, 2015 deadline but since cities and counties were not required to submit to OHA a copy of their passed ordinances, it is not known exactly when some of the moratoriums lifted. The chart (attached) shows the number of applications that were received by the program. The number of applications received from cities and counties with a moratorium grew steadily as the May 1, 2015 deadline approached.

Cost of a Dispensary Application

OHA charges dispensaries a $500 application fee and a $3500 licensing fee. The most common reason that an application is denied is that it is within 1000ft of a school or another dispensary. If that is found during the application process, the $3500 licensing fee is refunded once a denial is issued.