

Memorandum

To: Joint Committee on Marijuana Legalization

From: André Ourso, Manager Oregon Medical Marijuana Program

Date: February 1, 2016

Subject: Changes to Proposed Permanent Rules for Medical Marijuana Patients, Growers, Processors and Dispensaries

Background

On November 4, 2014, Oregonians voted to approve Measure 91. Measure 91 permitted “persons licensed, controlled, regulated and taxed by this state to legally manufacture and sell marijuana to persons 21 years of age and older.” This included the establishment of a “comprehensive regulatory framework concerning marijuana under existing state law.” Measure 91 was not intended to “amend or affect in any way the Oregon Medical Marijuana Act.” Because of perceived conflicts between Oregon’s medical marijuana program and Measure 91, the Oregon Legislature passed HB 3400 to better integrate the two programs. HB 3400 delegated to the Oregon Health Authority specific rulemaking authority to implement the legislation for better integration and consistency between the two programs. Those changes are listed in the attached table titled “Medical Marijuana Changes.”

Rulemaking process

On December 15, 2015, OHA filed with the Secretary of State a Notice of Proposed Rulemaking Hearing for the proposed rules for Medical Marijuana Growers, Processors, Dispensaries and Cards, Oregon Administrative Rules chapter 333 division 8. The proposed rules were developed with input from the Marijuana Rules Advisory Committee (RAC) at public meetings held at the Portland State Office Building on November 9, 16 and 30, 2015, and on December 7 and 14, 2015. A public comment period was held at each of the RAC meetings. To ensure adequate opportunity for public input, OHA also held public comment hearings on the proposed rules across Oregon included hearings in: Eugene on January 21, 2016, Portland on January 22, Bend on January 25 and Medford on January 27. An OHA hearings officer and OMMP staff member attended each meeting to record and listen to public comment.

Changes to the Proposed Rules

During the hearings OHA heard public comment on a variety of issues related to the implementation of the requirements of HB 3400 and the related proposed rules. OHA also heard comment about rules where it has general rulemaking authority to protect the public health and safety. Among the many important issues brought up by the public during these hearings OHA heard important concerns including: the effective date of March 1, 2016 to changes to the Oregon Medical Marijuana Act, residency

requirements, reporting of data related to the production and transfer of medical marijuana by growers, processors and dispensaries, grower operating procedures, waste management, grower security requirements and water rights. Based upon these concerns, OHA evaluated the proposed rules and made changes where it has the authority to do so.

Modifications to the proposed rules:

Security: Based upon medical marijuana growers' concerns about the cost and practicality of implementing the specific security requirements, OHA is removing the specifics in the proposed rules related to security and fencing. Rules will broadly require persons responsible for the grow site to prevent public access and keep plants out of public view consistent with the requirements in Measure 91.

Operating and Waste Management: OHA is also removing provisions related to operating procedures and waste management from its rules. In addition, OHA will not include language in rule referencing other state laws regarding water rights or pesticide use. OHA initially proposed language in rules to notify medical marijuana growers of existing water right and pesticide requirements, however OHA is removing this language from rule. *It is important to note removing the language from OHA rules will not exempt medical marijuana growers from being subject to state water rights or pesticide law.*

Reporting Requirements for growers, processors, and dispensaries: OHA proposed rules requiring reporting of aggregate transfer data, once a month. OHA is not proposing to have a tracking system like OLCC.

Effective Date: OHA is aware of concerns about the effective date of March 1, 2016 for implementing changes to the Oregon Medical Marijuana Act. HB 3400 established March 1, 2016 as the effective date of changes to the Act. This date is required by HB 3400 and cannot be changed by administrative rule.

Residency Requirements and Plant Limits: The plant limits and residency requirements also cannot be changed by rule.

For any concerns related to changes to the Medical Marijuana Act that are in HB 3400 and where OHA cannot make changes through rulemaking, OHA will work with lawmakers to best implement any suggested solutions.

Cc: BethAnne Darby, External Relations Director

