

Good afternoon Chairs Prozanski and Barker, members of the Judiciary Committees.

My name is Anthony Taylor and I am President of Compassionate Oregon, a nonprofit organization advocating for Oregon's medical cannabis patients since 2013 and the originator of HB 2198.

I have been asked here today to provide an update on HB 2198, how implementation is progressing, some of the unexpected costs and barriers we are encountering, and what might be done to address some of those issues.

After languishing under the guidance of the Oregon Health Authority for nearly two decades, House Bill 2198's primary goal was to create a different administrative structure for Oregon's Medical Marijuana Program which would not only create a bright line between the medical and recreational structures, but would also be appropriately responsive to the needs of the patients, have accountability to the legislature through a biennial report on the status of that program and to work with other agencies and organizations to propose legislative concepts to address those and other issues facing Oregonians using cannabis.

Slide – other provisions –

HB 2198 created the Oregon Cannabis Commission whose nine-member panel will now be responsible for guiding the Oregon Medical Marijuana Program (OMMP) into its future. HB 2198 also created the following provisions.

- Re-defined plant limits for households and OMMP grow sites.
- Allowed OMMP grow sites to be identified using tax lot ID#'s, and GPS coordinates.
- Reinstated caregiver's ability to grow for a patient.
- Prohibited high-cost security measures as a condition of reporting into CTS.
- Allowed dispensaries to be located within 500' of a school under certain conditions and,
- Allowed OMMP grow sites to transfer up to 20 pounds per year into the OLCC regulated market.

As you can see these provisions covered a wide range of issues.

But you cannot talk about HB 2198 without also talking about SB 1057 because this is where the tracking mandate and the new plant limits originated. HB 2198 after creating the Oregon Cannabis Commission became the fix to the fix.

SB 1057 was primarily intended to be a technical fix bill for OLCC and moved quickly through the building and becoming law in early May but it also made changes to the OMMP that would have an enormous impact on its patients and growers and their economic success. So it was left to HB 2198 still making its way through the building, to make some corrections to SB 1057, adopt provisions to address issues that had manifested along the way and to try and minimize the economic impact those changes might have on patients and growers.

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The two provisions in SB 1057 that affected OMMP patients the most were:

- A 10 plant limit on all households in Oregon.
 - 6 medical and 4 recreational no matter how many patients lived there

- Mandated seed-to-sale tracking for OMMP grow sites with more than 12 plants.

The new household limit was the first to create an unexpected issue.

HB 2198 amended SB 1057 to reinstate the household limit to allow a husband and wife to be able to continue to grow the six plants statute allows for but the committee would not allow the four additional recreational plants set forth under Measure 91 to be grown.

The resulting section in HB 2198 created some confusion and resulted in OHA receiving counsel that led to the following determination:

- HB 2198 creates a new grow site compliance issue where patients growing for themselves at their own address would no longer be able to grow for others and the grow site would be capped at 12 plants. This became known among growers as the “12 plant rule.”

Considering the majority of all OMMP grow sites are configured in this manner and the very foundation of Oregon’s medical program is built upon the concept that patients may grow for others unable to grow for themselves, the interpretation was confusing and sent shock waves through the OMMP grower community.

Growers facing harvest season had to hurriedly reconfigure grow sites to become compliant or be subject to a civil penalty and plant quarantines from OHA inspectors who, at the time, were conducting grow site inspections in several areas around the state.

The cost of reconfiguring a grow site is \$300 for each resident patient that has to make the change and will increase depending on how many patients live at the address that are also growing for themselves.

OHA did not initially notify OMMP growers of this change until after it was discovered in late September through on the ground conversations with compliance officers and worked its way back through channels that the growers community was noticeably concerned and seeking answers.

On October 5th, OHA issued Informational Bulletin 2017-08 notifying all growers of this change and on October 27th, adopted an emergency, temporary rule effective until January 1, 2018, to waive the change and grow site registration fee for those OMMP grow sites that need reconfiguration. OHA has also temporarily suspended grow site inspections until further clarification can be reached and a new policy can be established. This conversation is ongoing.

The second issue affecting the OMMP community is again tied to SB 1057 where the new tracking mandates for medical growers are placed.

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Under the tracking mandate of SB 1057 an OMMP grow site with more than 12 plants must switch from the monthly tracking system used by OHA to the tracking system used by OLCC licensees, known as METRC.

To this end the OLCC needed to determine and prepare for new METRC users coming into their system. To prepare for and to determine this SB 1057 required the OHA to send out a form by September 1, 2017, to all growers required to come into METRC. This letter notified OMMP growers that they must return the enclosed Grow Site Election Form by December 1, 2017, and notify OHA of one of three choices for the grow site.

- Remain with the OMMP, growing more than 12 plants and reporting into the CTS no later than July 1, 2018;
- Remain with OMMP and growing 12 plants or less and avoid tracking altogether under exemption, or
- Transition into OLCC and submit an application to OLCC by January 1, 2018.

All OMMP grow sites are required to return the Grow Site Election Form to OHA no later than December 1, 2017. A grow site that does not respond will not be allowed to renew that grow site and patients will not be allowed to renew at that grow site.

OHA reports sending nearly 35,000 letters to growers at 25,155 grow sites. Of these letters, only 6000 forms have been returned (24%)—leaving 19,000 notices yet to be returned. With the deadline only 15 days out, this seems like an insurmountable task. (See attached report).

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The unintended and unfortunate consequence here is that as a result of the short window in which to return the forms (90 days) and the large number of forms that had to be returned (25,155) the current, low return rate will result in thousands more patients losing their growers. Even the threat of being unable to renew your grow site

In 2015 when this body adopted plant limits and OHA reporting for OMMP growers, the number of patients no longer designating a grower doubled, jumping from 7,000 patients to over 16,000 in less than two years. The number now stands at 18,025. And while that number has stabilized, the new tracking mandate will add thousands more patients to that growing list as more growers simply opt out of tracking.

The biggest issue facing implementation of the tracking mandate and the associated cost to growers, however, is this:

Determining whether OMMP growers will report into METRC by grow site, or whether the state will make all growers at grow sites with more than 12 plants enter into METRC.

SB 1057 Section 40 outlines the requirements for tracking of OMMP grow site and allows for an exemptin from tracking in Subsection (10) which states:

“This section does not apply to a marijuana grow site located at an address where a registry identification cardholder produces marijuana and no more than 12 mature marijuana plants and 24 immature marijuana plants are produced at the address.”

This factor could have the biggest unintended consequences of 2017’s cannabis legislation. If all growers at a grow site are required to report into METRC but are exempt from reporting altogether if they reduce their grow sites to 12 plants or less, growers will do this. If this happens as the returns are beginning to reflect, it will mean patients will lose their growers in large numbers and the cost for growing for patients will skyrocket.

Proposed rules by both OHA and OLCC, now in the public comment period, do trend in the direction of grow site reporting as a single address rather than placing that burden on all growers at a grow site. OHA has a proposed rule requiring that the grow site—rather than each individual grower at that site—have a certified scale. An OLCC-proposed rules refers to a “grow site representative.” HB 3400 allows for a grow site administrator and

OHA Div. 8 rules provide the process to allow a grower to be designated to report for the garden as a whole. We just have to make these changes.

What do these changes mean for growers and the agencies if we don't?

- Increased costs for grow sites, grower attrition and increased cost for patients losing growers. The way OMMP reporting currently is proscribed, under METRC, anyone growing at a grow site with more than 12 plants is required to report into the CTS. This will result in patients being forced into retail stores and unregulated markets to obtain medicine.

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If the rules are **not** grow site specific multiple growers registered at any grow site with more than 12 plants will be required to enter data into the CTS and pay the appropriate fees.

All multi-patient grow sites require multiple growers. A grandfathered grow site with 48 plants for instance, requires a minimum of 2 registered growers. If METRC user fees are applied to each grower, a grow site with two growers would pay nearly \$1K a year. Add to that a per-patient grow site registration fee of \$200, and a 8-patient grow site will pay \$1600 alone in grow site registration fees bringing the total of a 48 plant grow site to nearly \$2,600 per year in grow site and use fees. Add a state certified scale and an additional administrative cost fee and a 48 plant grow fasts becomes an financial burden most growers are no longer willing to shoulder.

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- The amount of money tracking alone will pull out of the OMMP growers community based on just grow sites and not growers at grow sites with more than 12 plants is nearly \$2M annually. If tracking and METRC costs are assessed on individual growers that number increases dramatically.
 - Grow site specific – 4,000 grow sites, \$480 per grow site \$1.92M
 - Individual Grower – additional 6,000 users, \$480 per grower \$2.88M
 - Individual Grower at 25,000 users, \$12M
- Increased costs to administer the reporting system. This is a harder number to predict and will ultimately depend on the number of OMMP growers that actually return their Grow Site Election Form and, of those, how many actually opt for OMMP and the CTS. At the present rate of return of only 24% (6,000) and of those only 3% (156) opting for CTS, these numbers will barely move the needle when it comes to costs.

Finally, there is one other cost that has not gotten much attention but will have an impact on all PRMGs within the program. It can be found under SB 1057's tracking mandate in Section 40(8).

“When imposing a fee on a person responsible for a marijuana grow site, marijuana processing site or medical marijuana dispensary under ORS 475B.420, 475B.435 or 475B.450, the authority shall impose an additional fee that is reasonably calculated to pay costs incurred under this section other than costs paid pursuant to subsection (7) of this section.”

The Legislature added this provision to allow an administrative cost fee to be added to the application costs of all PRMGs to cover the cost for OLCC to administer the CTS for medical growers.

OLCC licensees pay this fee in their license fee and the remaining revenue is reserved for administering the recreational program including tracking.

These are the unintended consequences, barriers and costs of SB 1057 & HB 2198. They are issues that will cause many growers now providing for patients to step away from that task because they can no longer afford it.

So what are our options?

Given the limited number of bills that may be introduced in 2018, opportunities to make legislative changes may be hard to come by. Fortunately, one of the biggest hurdles we face can actually be done by rule if necessary.

1. Remove remaining barriers to multi-patient grow sites and consolidate grow site reporting into the responsibility of one person. One person, one grower, one grow site registration fee, one METRC user fee, one scale, one person responsible for the reporting.
 - a. Remove the limit of four patients per grower and allow an individual grower to be the actual PRMG responsible for all the fees and reporting associated with the grow site.
 - b. Waive administrative cost fee for first year.

2. METRC mandate.
 - a. Move deadline for complete compliance to December 31, 2108, and give OMMP growers a longer grace period to return their forms.
 - b. Reduce or waive fees for METRC and administrative cost fees for the first year.

In conclusion I would just like to add that many of us are excited about and looking forward to Oregon's new Cannabis Commission and the opportunity it will provide to work through these and other issues cannabis patients face on a daily basis. It will be especially nice to be able to discuss these issues without the needs of the recreational regulatory structure dominating the discussion.

Thank you again for the opportunity to provide some insight into these bills and I am happy to answer any questions you might have.