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June 8, 2017

Lori Ajax
Chief, Bureau of Medical Cannabis Regulation
1625 North Market Boulevard, Suite S-202
Sacramento, CA 95834

Re: Recommendations regarding the Proposed Cannabis Regulations

Dear Ms. Ajax:

The California Conference of Local Health Officers (CCLHO) sincerely appreciates the opportunity to provide input on the proposed Medical Cannabis Regulations issued by the Bureau of Medical Cannabis Regulation (Bureau). CCLHO was established in statute in 1947 to advise the California Department of Health Services (now the California Department of Public Health), other departments, boards, and commissions, as well as officials of federal, state and local agencies, the Legislature and other organizations on all matters affecting health. CCLHO membership consists of all legally appointed physician health officers in California's 61 city and county jurisdictions. On June 1, 2017, CCLHO held a meeting of local Health Officers from across the state to review and vote on recommendations regarding the draft regulations.

With the recent legalization of adult-use cannabis and the continuing commercialization of medical cannabis, California is entering a new era which holds the potential for both benefit and harm. Cannabis already impacts communities throughout the state, and this impact will only increase in the coming years, with unknown net long term impacts. As such, it is incumbent on us, as policy makers, subject matter experts, and leaders to be deliberate and conscientious in designing the statutory and regulatory framework in order to both protect health and to ensure the success of the policies enacted by the legislature and approved by the voters.

CCLHO believes that great attention should be given to protecting public health and minimizing negative health impacts. In the interest of protecting the health of our citizens and communities, we urge the Bureau to include the following considerations in the adopted regulations:

- 1. Ensure product safety.** Cannabis is a rapidly evolving industry creating new and innovative products that have not been widely tested or used. It is critical that policies are put in place to maximize product safety. Regulation is needed to ensure the safe content of cannabis products and prevent product contamination by pesticides, solvents and other chemicals. Manufacturing should adhere to hygiene and sanitation standards. Edible products should be self-stable (non-potentially hazardous food products) and have clear, correct labels.
- 2. Protect against overdose and accidental ingestion.** Products need to be immediately identifiable as cannabis products. The manufacture and sale of edible products should be kept entirely separate from food production and sale to prevent confusion or cross contamination. All products should have limits on the amount of active ingredients allowed per dose and per package. Product packaging and labeling should be designed to prevent accidental ingestion.

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3. **Prevent youth use.** Available research demonstrates that cannabis may negatively impact the developing brain in individuals up to the age of 25. This is an important detail, for even though adult-use cannabis may be legal for persons 21 and older, this does not mean that chronic use in early adult life will have the same health effects as someone above the age of 25 and may indeed be more risky. In addition, regulations need to be designed to prevent youth use, with policies created to address product visibility, prevent the glamorization of product use and prevent advertising that targets youth. In addition, policies should prohibit the discounting of products to youth-friendly price points. CCLHO also recommends the enactment of policies to prevent the diversion of cannabis and cannabis products to youth who are restricted from accessing these products.
4. **Ensure compliance with regulations and provide adequate resources for enforcement.** The cannabis industry is entirely new to regulation; therefore, now is the critical time to establish and ensure adherence to policies and procedures as this will set the tone for the future. CCLHO strongly believes that the state must inspect commercial operations at least once per year. This inspection schedule is especially critical as the ability of different jurisdictions to oversee the cannabis industry will vary. Strong oversight of dispensaries, the public's point of access to cannabis, is essential to protecting our communities and preventing youth use.
5. **Conduct ongoing epidemiology and measure impacts.** Current cannabis scholarship and research is scant. There is particular urgency in understanding more about the biologic effects; health, societal and cultural impacts; and changes in norms and behaviors over time. CCLHO recommends reporting requirements on metrics for both commercial cannabis operations and regulatory agencies, to facilitate the analysis of cannabis commercialization impacts and enable the state and local health departments to accurately evaluate and adjust policy as needed to protect the public's health.

CCLHO believes the Medical Cannabis Regulation and Safety Act (MCRSA) and the proposed regulations from the Bureau provide a strong start to regulating this industry, and we applaud those who have worked diligently to build this framework. We have specific thoughts and recommendations regarding the proposed regulations, including specific areas where we recommend strengthening the proposed regulations. Please see the detailed attachment enclosed below.

Thank you again for this opportunity to provide input on this important public health issue. If you have any questions, please feel free to contact me via email at Ken.Cutler@co.nevada.ca.us or by phone at 530-265-7154.

Sincerely and on behalf of the CCLHO membership,

Original signed by Dr. Ken Cutler

Ken Cutler, MD, MPH
President, California Conference of Local Health Officers

Enclosure

Karen Smith, MD, MPH, Director and State Public Health Officer, California Department of Public Health
Amber Morris, Branch Chief, California Department of Food and Agriculture

The California Conference of Local Health Officers (CCLHO) has provided below our specific thoughts and recommendations regarding the draft regulations from the Bureau of Medical Cannabis Regulation. The CCLHO recommendations are divided into categories, with our highest priorities highlighted in bold italics.

1. Local Control:

a. CCLHO supports the primacy of local control and the requirement stated in 5006(b)23 that applicants include documentation issued by the local jurisdiction certifying that the applicant is in compliance with all local ordinances and regulations, or will be in compliance with all local ordinances and regulations by the time the bureau issues a license.

i. CCLHO believes that ensuring compliance to these regulations is critical not only for the success of the industry but also for protection of public health. This raises the concern that while cannabis regulations authorize state and local jurisdiction authority, Health Officers act in an intermediary function, serving both the unincorporated county and the cities within the county. Many cities do not have a health expert who can act in situations that pose an acute threat and require a rapid local response, and cities rely on their County Health Officer. Given this industry will be new to regulation and failure to adhere to regulations or emerging situations could severely threaten public health, ***Health Officers believe that there should be clear authority for us to take action to protect health within both the unincorporated county area and the cities should there be an imminent threat. This authority is not intended to supplant the State's responsibility to ensure that licensees adhere to regulations, nor is it intended to incur a cost to a County for on-going permit enforcement within a City.*** However, authorizing a Health Officer to act at his or her discretion to enforce issues which threaten human health and safety is not only a necessary protection for our residents, but is an existing expectation of many of our residents. Therefore, both code and regulations should be clear and not preclude Health Officers from taking action within a city that they would otherwise do for a non-cannabis related issue.

2. Siting/Setbacks: CCLHO strongly support setbacks requiring cannabis businesses be placed away from sensitive areas. We support the setback requirement for schools, and, in fact, would recommend an even greater setback of 1000 feet. While these regulations are written for MCRSA, we support the more broad inclusion of daycare centers and youth centers within the definition of sensitive areas used in the Adult Use of Marijuana Act (AUMA), Business and Professions Code (BPC) 26054, for medical cannabis businesses as well. We also recommend the addition of colleges (since most college students are under 21 years of age) and drug treatment centers as sensitive areas. CCLHO also recommends the following for siting and setbacks specific to schools:

a. We support 5006 (b) 25 that requires the distance from schools be determined according to HSC 11362.768, which measures from property line to property line, instead of determining the setback from only the school entrance.

b. We are concerned about preserving the viability of future school locations and recommend the extension of this requirement to all properties zoned for schools, or incorporate a similar provision that maintains the future availability of school sites and simultaneously protects future students.

3. Premises:

- a. The Health Officers request clarification of the language in 5010 which reads, “(a) Premises means the designated structures and land specified in the application that are in the possession of and used by the applicant or licensee to conduct the commercial cannabis activity. (b)The premises must be a contiguous area and may only be occupied by one licensee.” As it is currently written it appears that if an individual holds more than one license, that person/operation could have more than one commercial activity occurring on the same premise. This could create enforcement issues in applying different regulations for different types of operations to the same location as well as track and trace issues. In addition, if this will later allow adult-use and medical-use to be co-located, this could create issues not just with potential product confusion but also in enforcement as there are different age allowances for both employees and purchasers.
- b. CCLHO supports section 5012 that requires applications to provide a premises diagram that indicates i) what part of the property is used for premises and ii) what the use of the remaining property will be. We hope there will be some consideration given to what other activities are occurring on the property in proximity to the premises and their potential influence on youth.
- c. CCLHO also supports the requirements that any modification to the premise requires advanced permission (5048).

4. Track and Trace Requirements: CCLHO supports strong regulations regarding track and trace to prevent product diversion, as are listed in section 5050.

5. Licensee Responsibility: CCLHO supports section 5051 holding licensees responsible for the acts of their employees and agents.

6. Records and Reporting: CCLHO supports the requirements for detailed records and retention of records (5056). CCLHO also supports that inventory be taken at regular intervals and that significant discrepancies (as defined in 5058) necessitate notification of law enforcement and the Bureau within 24 hours (5062).

7. Security: CCLHO supports limited access areas (5064) as well as the requirement for video surveillance (5068).

8. Waste Management: CCLHO believes that it is critical to have strong regulations for cannabis waste management throughout the lifecycle of the cannabis product, from seed to manufactured product disposal. Section 5080 appears to be a good start and CCLHO recommends further input be considered via consultation with waste management experts such as CalRecycle and the California Conference of Directors of Environmental Health (CCDEH).

9. Distribution:

- a. The Health Officers support the regulations for distributors that prohibit consignment (5084), authorize the distributor to destroy product (5088), require storage by individual batches (5090), and require at least weekly inventory reconciliation (5112).

- b. CCLHO opposes section 5094 allowing distributors to re-package and re-label cannabis, as this is a function of manufacturers and should require a manufacturing license. In addition, we strongly oppose section 5094(c) which allows a distributor to have a non-licensee package and label on the distributor's premises. The purpose of requiring a license is to ensure adherence to regulations and prevent diversion; any individual or agency performing cannabis business operations, including the packaging of cannabis products, should possess a license.
- c. The Health Officers request clarification as to whether section 5096, prohibiting a distributor from storing and distributing non-medical-cannabis goods on or from the premises licensed for distribution of medical cannabis goods, applies only to other cannabis products or to any type of product. We support the complete separation of medical cannabis and non-medical cannabis premises. In addition, we recommend the prohibition of other goods so as to minimize access to cannabis goods.

10. Transportation:

- a. CCLHO supports the transportation requirements (5124) including prohibiting unmanned vehicle transportation, ensuring goods are not visible or identifiable from outside the vehicle, and requiring security for the vehicle.
- b. CCLHO supports restrictions on anyone under the age of 21 from being in a commercial vehicle transporting cannabis goods as well as the restriction on anyone other than the transporter or an employee of the licensee from being in the vehicle (5128).
- c. We also support limits on how long goods may be stored on the transporters premises (5130), specified requirements for storage of batches (5132), and the requirement for notification of shipment (5136).

11. Dispensary Compliance Monitoring: CCLHO is extremely concerned that the Bureau's draft regulations do not include details or requirements for inspections of dispensaries. As the point of product access by the public, dispensary compliance with regulations is essential to protecting public health. Products sold at dispensaries must come from licensed manufacturers with appropriate storage to ensure no contamination or product damage. Dispensaries are also a point for product diversion and need to be closely monitored. Dispensaries are the front lines in preventing youth access to the products. ***As such, CCLHO believes it is critical that the Bureau of Medical Cannabis inspects dispensaries regularly, at least once per year, for compliance.*** In addition, CCLHO recommends that the Bureau of Medical Cannabis Regulation annually report the number of violations identified in each jurisdiction.

12. Dispensary General Operations:

- a. The Health Officers support the prohibition on dispensaries subletting a portion of the licensed premises (5145).
- b. We also support restrictions on access to both the dispensary premises (5148) and the limited access areas (5151). We agree that access to the limited-access areas should be restricted to individuals over 21 and that any non-employees should be recorded in log and escorted all times. This restriction helps reduce diversion opportunities.
- c. CCLHO also supports that, prior to entry to the retail area; the dispensary must verify individuals as a patient or primary caregiver (5154).

- d. We support the requirement that medical cannabis goods for sale can only be displayed inside retail areas, that goods cannot be readily accessible to the customers, that only employees may remove products from packaging, who must then put the products in a container and not hand it to the customer, and that if a product is removed from packaging, that product cannot be sold (5163). These requirements help ensure product safety and prevent diversion.
 - e. CCLHO also supports the restriction from re-selling returned products (5175).
13. Dispensary Hours: The Health Officers appreciate the limitation on dispensary retail hours of operation (5157) and recommend further shortening the hours to 7am to 8pm. Based on data regarding alcohol sales that limiting hours reduces injuries due to intoxication, as well as the lack of knowledge of the impact on cannabis commercial activities on the community, CCLHO recommends a conservative approach to hours of operation, recognizing it is easier to expand hours in the future than restrict them. We also recommend the creation and tracking of metrics to evaluate hours of operation for the future.
 14. Dispensary Daily Sales Limit: CCLHO sees value in placing limits on the amount of product that a licensee can sell to an individual customer to limit misuse and diversion as well as match what is legally allowed for possession (5172). However, CCLHO considers that the determination of that amount based on weight is an inaccurate and ineffective way to protect health. Cannabis plants and products today are far more potent than in prior years, with no data currently available on a safe daily amount for consumption. Eight ounces of cannabis products could easily contain thousands of milligrams of THC. We recommend that limits should be set based upon the milligrams of active ingredients (THC, CBD) sold to an individual. We suggest designating CDPH or another public health expert with evaluating and proposing a more scientific formula for setting daily sales limits for health and safety. This will be even more critical with regulations for adult-use and protecting individuals from excessive exposure.
 15. Dispensary Customer Samples: The Health Officers support the prohibition on providing free samples to any person (5178) and recommend the expansion of this prohibition to provide sufficient protections. **Regulations should not only prohibit free samples, but also prohibit coupons, buy-one-get-one deals, happy hours, and other forms of discounting as these activities encourage extra product purchasing and create youth/younger adult-friendly price points.** In addition, regulations should also prohibit the donation of cannabis products to promotional events, i.e. non-profit fundraisers.
 16. Dispensary Packaging: CCLHO supports the requirement that all items must be packaged prior to acceptance from a distributor and that dispensaries shall not package or label cannabis goods (5181). We also support the requirements for exit packaging (5184).
 17. Dispensary Deliveries:
 - a. CCLHO supports the current requirements on deliveries that require individuals to be employees of the dispensary and at least 21 years of age (5187). We also support requiring all deliveries to be made in person (5187d).
 - b. We believe that the definition of a delivery needs to have additional detail (5187) to prevent misuse of the delivery process and creation of mobile dispensaries. **CCLHO recommends adding the specification that any delivery must be for a product ordered in advance and additional products or customers for delivery cannot be added after the delivery employee has left the dispensary premises.**

- c. The Health Officers support the prohibition on delivery to an address located on publically owned land or leased by a public agency (5190). ***We strongly recommend adding an additional prohibition on delivery to a public place or event open to the public, such as a mall, hotel lobby, or music concert.***
 - d. We support requirements that deliveries be transported via enclosed motor vehicle and that goods cannot be left unattended (5193). ***CCLHO recommends an additional requirement, similar to those on transporters, to prohibit an individual who is not an employee of the licensed dispensary from being in the vehicle when it contains cannabis goods***, i.e. no transporting children to school on route to a delivery.
 - e. We support requirements that delivery vehicles be unmarked (5193), the limitations on the amount of product carried on a delivery route (5199), that employees cannot consume cannabis while delivering goods (5202), and that the delivery route should not deviate from the planned path unless necessary for specific reasons (5208).
 - f. CCLHO also supports the requirements for a delivery request receipt as well as the contents of that receipt (5205). In addition, we recommend a clear requirement that the delivery employee verify and document that the individual who receives the delivery is in fact the patient or the caregiver who placed the order.
 - g. We also request the clarification that deliveries cannot occur within a jurisdiction that has prohibited delivery, even if the jurisdiction in which the dispensary is licensed allows deliveries.
18. Dispensary Inventory and Records: CCLHO supports requirements regarding the storage of products separate from break rooms and with certain standards (5214). We also support the requirements that shipments of goods must be received through an entry separate than the public, with goods immediately placed in a secure room (5217). We support requirements on inventory documentation and reconciliation (5220 and 5223). In addition, we support the requirement to record sales in a manner that not only includes products sold but also the name of the patient or caregiver (5226). These requirements will enable the timely and specific notification to the customer in case the product is identified as contaminated and needing recall. Similarly, we support track and trace requirements on dispensaries (5232) and notification of law enforcement of discrepancy (5235).
19. Dispensary Grace Period: CCLHO recognizes the need for a grace period for a dispensary to sell its inventory of untested products to ensure that product is available prior to licensing of testing laboratories. We therefore support the grace period that also requires clear labeling that the product has not been tested (5229).
20. Dispensary On-Site Consumption: CCLHO has concerns that the draft regulations do not address on-site consumption and believes it should be prohibited. Exposure to second-hand smoke/vapor is an occupational health concern for employees, and this section is not aligned with state tobacco law. In addition, on-site ingestion poses a potential for overdose, particularly if the retailer is removing product from packaging and/or if the retailer is combining cannabis product with other products, such as foods. And finally, on-site consumption poses the safety risk of individuals driving under the influence.

21. Dispensary Other On-Site Activities: The draft regulations also do not address what other activities can occur on the dispensary premises.
- a. ***The Health Officers believe commercial premises should be limited to commercial operations only and not be permitted to have additional activities on site.*** CCLHO recommends a clear prohibition on the production or sale of other food products on-site to prevent product confusion and accidental ingestion. Other prohibited activities should include, but are not limited to: special events or parties, food retail activities (i.e. a coffee shop), tasting events, fund-raisers, gyms, spas, or classes. Such activities can promote the misuse of cannabis, encourage the consumption of high doses of product, open the opportunity for accidental ingestion, and increase the likelihood of injury.
 - b. Further, the Health Officers recommend that the sale of merchandise promoting a specific commercial cannabis operator, such as t-shirts and other souvenirs, should be prohibited, as these items are inherently attractive to children and their use serves as mobile advertisements which can go to locations where advertising would otherwise be prohibited.
22. Dispensary Off-Site Sales: Aside from delivery, the draft regulations do not mention sales or non-sale distribution of cannabis products at locations distinct from the specific land-use location where the dispensary is licensed. This is of significant concern to the Health Officers, who have already received complaints about cannabis sales at special events such as festivals at the fairgrounds. CCLHO recommends the inclusion of specific language restricting commercial operators from selling or distributing products off-site, including a prohibition on temporary retail locations at events such as: sales at private or public events, farmer's markets, gyms, or workshops. We recommend a ban on cannabis-related activities that are modeled similar to food truck operations.
23. Laboratory Testing: Although CCLHO was unable to complete a thorough review of the draft testing laboratory regulations in time for this letter, we are supportive of most of the concepts included. We support comprehensive testing requirements to ensure product safety. We believe that regulations should be adaptable to allow iterative changes to what testing is required as knowledge and experience expand.

In conclusion, the Health Officers appreciate the chance to comment on the draft regulations. We recognize the months of hard work that went into crafting these provisions, which are clearly aimed at establishing a well-run industry while protecting public health. We hope our comments and recommendations, which come from a population-based disease and injury prevention perspective, are helpful in furthering your aim to protect public health.