

# Boston Alliance for Community Health

622 Washington Street, Dorchester, MA 02124  
[www.bostonalliance.org](http://www.bostonalliance.org)

**On February 28, the Boston Alliance for Community Health (BACH) sent a set of recommendations to the Massachusetts department of Public Health regarding the proposed regulations for the implementation of the medical marijuana law that was passed by voters in November 2012. Our concerns centered on the following:**

## **Youth Access**

It is important that however the medical marijuana is made available to those who have legitimate needs for it not make it more easily accessible or attractive to youth. This is because:

1. Many adolescents have been confused by the decriminalization and medical efficacy of marijuana for people with certain conditions and think that there is no health or legal risk for themselves.
2. Adolescents are more likely to become addicted to marijuana than adults
3. There is significant evidence that marijuana use can have profound effects on the developing adolescent brain.

## **Criminal Activity and inequitable law enforcement**

There are a number of increased risks for criminal activity in neighborhoods where there would be dispensaries as well as enforcement issues. These include:

1. Targeting of users near the dispensaries and/or at their homes for theft
2. Targeting of dispensaries for theft of both the medical marijuana and the money that would be on premises because this would be a cash-only business given the reluctance of banks to interact with dispensaries due to the Federal prohibition of marijuana
3. Targeting of homes where marijuana might be grown in small amounts for individual consumption and large amounts for large scale "grow houses."
4. Unequal enforcement of marijuana laws based on race/ethnicity and age.

## **Financial Implications**

The law is clear that the regulation and enforcement of the law should be "revenue neutral." If this is to be the case, the fees collected from registered dispensaries should cover the full costs which would include increased law enforcement and MDPH inspection of dispensaries and home grown operations as well as any consumable products.

## **Conflict with tobacco related "smoke-free" regulations**

Having worked very hard to implement wider "smoke-free" regulations, we are concerned that there will be confusion about the applicability of those regulations to smoking medical marijuana.

\*see below for the specific recommendation made by BACH in February, 2013

**The following is a comparison of the BACH recommendations with the regulations that were published in April, 2013. Special thanks to Tara Doran, MPH Project Director | South Boston Action for Substance Abuse Prevention | CAN Coalition Drug-Free Communities Project at the South Boston Action Center**

### **Prohibition Recommendations\***

***The draft regulation does not prohibit smoking of medical marijuana in all public places as BACH had recommended.*** It does prohibit the consumption of marijuana and marijuana products on the premises or grounds of the medical marijuana treatment centers (MMTC) [105 CMR 725.105(F)(4)] and requires that MMTCs have alcohol, smoke, and drug-free workplace policies [105 CMR 725.105(A)(10)]. Additionally, DPH writes in its Informational Briefing on Proposed Regulations at 105 CMR 725.000 that this law: 1) does not require any accommodation of the medical use of marijuana in any workplace, school bus or grounds, youth center or correctional facility or 2) require any accommodation of smoking marijuana in any public place (page 3).

***The regulation does not prohibit advertising of medical marijuana as BACH had recommended.*** However, there are explicit guidelines regarding marketing and advertising to prevent 1) the promotion of recreational use, 2) attractiveness of the product for anything other than medicinal use, and 3) appeal to youth. The marijuana products will be packaged in plain, opaque, child-proof containers without depictions of the product, cartoons, or images other than the logo of the medical marijuana treatment center (MMTC) [105 CMR 725.105(E)(1)]. The logos of MMTCs may be used in labeling, signage, and other materials; however use of medical symbols, images of marijuana, related paraphernalia, and colloquial references to cannabis and marijuana are prohibited from use in this logo [105 CMR 725.105(L)(1)]. Additionally, MMTCs may not produce any items for sale or promotional gifts that bear a symbol or reference to marijuana, including the logo of the MMTC [105 CMR 725.105(L)(7)].

***There is no mention of point-of-purchase marketing but there are restrictions within the MMTCs.*** All marijuana products are to be kept in locked, opaque cabinets or containers, with the exception of allowable displays. Allowable displays are to be in secure, locked cases, with no more than one sample of each product offered for sale; display cases may be transparent [105 CMR 725.105(L)(9-10)]. Product sampling is prohibited as BACH had recommended [105 CMR 725.105(N)(5)]. Additionally, MMTCs may not sell or distribute marijuana products over the Internet or by mail order [105 CMR 725.105(N)(6)] only at the center or by home delivery as it is outlined in the regulation. There is no mention of prohibition from sponsorships, social media marketing, or depictions in entertainment venues.

***The regulations do not prohibit the distribution of MMTCs from areas within 300 feet of schools; there is no mention of zoning in the regulations.*** There are however many restrictions regarding the exterior of MMTC buildings including limitations of signage size, prohibition of sign illumination, product advertising, graphics related to marijuana or paraphernalia, pricing of products, and the visibility of any products to persons outside of the building [105 CMR 725.105(L)(2-6)]. Additionally, MMTCs may not produce any items for sale or promotional gifts that bear a symbol or reference to marijuana, including the logo of the MMTC [105 CMR 725.105(L)(7)].

### **Requirement Recommendations\***

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As BACH recommended, the draft regulations do require:

- ***An on-going relationship between a patient and the recommending health care provider termed a Bona Fide Physician-Patient Relationship including an in-person office visit.*** Additionally, physicians who wish to issue certifications for medical marijuana must be registered with the state and hold a Massachusetts Controlled Substances Registration from the Department of Public Health [105 CMR 725.005(A)(2)] that is part of the state's Drug Control Program. As well as require the physician to complete continuing professional development credits in programs that explain marijuana use risks and benefits, including substance abuse recognition.
- ***Before certifying a qualifying patient, the physician must utilize the Massachusetts Prescription Monitoring Program*** unless other specified by the DPH to review the qualifying patient's prescription and medical marijuana certification history [105 CMR 725.010(E)]. Patients are also not allowed to change MMTCs more than once in a 120-day period, and must notify DPH of any change in MMTC [105 CMR 725.015(E)].
- ***Certifications from physicians may not be valid for less than 15 days nor longer than one year*** [105 CMR 725.010(H)]. It is also stated that a patient who has had a diagnosis of a debilitating medical condition in the past but does not have active disease and is not undergoing treatment for such condition is not suffering from a debilitating medical condition for which the medical use of marijuana is authorized [105 CMR 725.010(E)].
- ***Medical marijuana registration cards will be valid for five years from the date of issue and may be renewed*** [105 CMR 725.015(B)]. In addition to the registration card, a photo ID must be presented to get marijuana products from the MMTCs [105 CMR 725.105(F)(1)(a-b)].
- ***For patients under the age of 18, two MA licensed certifying physicians, one of whom is a board-certified pediatrician, must diagnose the patient with a life-limiting illness*** (a debilitating medical condition that does not respond to curative treatments, where reasonable estimates suggest death may occur within six months); ***parents or legal guardians must consent to the treatment and will be designated as a personal caregiver of the patient*** [105 CMR 725.015(A)(1)(a-b)].
- ***Labeling on packaging must include this statement, including capitalization:***

***“This product has not been analyzed or approved by the FDA. There is limited information on the side effects of using this product, and there may be associated health risks. Do not drive or operate machinery when under the influence of this product. KEEP THIS PRODUCT AWAY FROM CHILDREN.”*** [105 CMR 725.015(A)(1)(a-b)].

- ***Dispensary agents (personnel) are required to complete training as specified by the DPH [105 CMR 725.105(H)].*** However, the training is not outlined in this regulation. Also, MMTCs must submit a detailed description of all intended training(s) for dispensary agents [105 CMR 725.100(B)(3)(t)]. It does not specifically say that the trainings must include how to discuss unhealthy

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substance use with customers and discourage the diversion of the drug to underage users.

- ***There are extensive precautions to limit criminal activity*** including the requirement of high-quality cameras [105 CMR 725.110] in all MMTCs to reduce the risk of criminal activity and to protect the safety of clientele and staff.

**The draft regulations do not require the following that BACH recommended:\***

- All District Attorneys in MA s to report to the MDPH for the periods 05/01/12 through 04/29/13 and 05/01/13 through 04/30/14, the following:
  - Number of arrests and/citations for possession of marijuana in the county, by age and race of arrestee;
  - Number of successful prosecutions for possession of marijuana in the county by age and race;
  - Number of cases discontinued because of medical marijuana exemption.
- MDPH conduct a thorough evaluation of the regulation's effectiveness during the first year of implementation prior to any expansion of the number of dispensaries.

However, the DPH Informational Briefing on Proposed Regulations at 105 CMR 725.000 acknowledges the need for a DPH program to oversee the implementation of these regulations. The program will be maintained by money received through the fees qualifying patients, personal caregivers, physicians, and MMTCs must pay once they are registered (page 10); the fee framework has not been released but is currently being worked on (page 8). The Briefing also acknowledges the concern expressed by BACH regarding youth access and states that it aims to prevent youth use/abuse.

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