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file:

**STATE OF HAWAII  
DEPARTMENT OF HEALTH  
OFFICE OF MEDICAL CANNABIS CONTROL &  
REGULATION**  
4348 WAIALAE AVE #648  
HONOLULU, HAWAII 96815

**NOTICE OF MEETING  
Dual Use of Cannabis Task Force**

October 31, 2022  
12:00 p.m. – 1:30 p.m.

Physical Meeting Location: Hawaii State Art Museum - Multipurpose Room, 1<sup>st</sup> Floor  
No. 1 Capitol District Building, 250 South Hotel Street  
Honolulu, Hawaii

Remote Meeting Location: Video Conference or Telephone

The Task Force will be meeting remotely using interactive conference technology and will provide a physical location for the public to participate in and view the meeting. The public may also access the meeting through the following video conference link:

<https://zoom.us/j/98417315934?pwd=MG1pQUhyNzBRNVBwdCtVRHY3cmhkZz09>

Or by Telephone: +1 253 215 8782 using Meeting ID: 984 1731 5934 and Passcode: 165660

*Interested persons can submit written testimony in advance of the meeting, which will be distributed to Task Force members prior to the meeting. Written testimony should be submitted not later than 24 hours prior to the meeting to ensure time for members to review it. Submit written testimony to: [omccr@doh.hawaii.gov](mailto:omccr@doh.hawaii.gov) or by postal mail to: Office of Medical Cannabis Control and Regulation, 4348 Waialae Avenue #648, Honolulu, HI 96816 or by using the online form at: <https://health.hawaii.gov/medicalcannabis/dual-use/testimony>. Please include the word "testimony" and indicate the agenda item that your testimony relates to.*

**INTERNET ACCESS:**

To view the meeting and provide live oral testimony, please use the link at the top of the agenda. Your microphone will be automatically muted. When the Chairperson asks for public testimony, you may click the Raise Hand button found on your Zoom screen to indicate that you wish to testify about that agenda item. The Chairperson will individually enable each testifier to unmute their microphone. When recognized by the Chairperson, please unmute your microphone before speaking and mute your microphone after you finish speaking.

**PHONE ACCESS:**

If you cannot get internet access, you may get audio-only access by calling the Zoom Phone Number listed at the top on the agenda. Upon dialing the number, you will be prompted to enter the Meeting ID and Passcode, which are also listed at the top of the agenda.

When the Chairperson asks for public testimony, you may indicate you want to testify by entering "#" and then "9" on your phone's keypad. After entering "#" and then "9", a voice prompt will let you know that the host of the meeting has been notified. When recognized by the Chairperson, you may unmute yourself by pressing "#" and then "6" on your phone. A voice prompt will let you know that you are unmuted. Once you are finished speaking, please enter "#" and then "6" again to mute yourself.

When testifying, you will be asked to identify yourself and the organization, if any, that you represent. Each testifier will be limited to two minutes of testimony.

Instructions to attend State of Hawaii virtual board meetings may be found online at <https://cca.hawaii.gov/pvl/files/2020/08/State-of-Hawaii-Virtual-Board-Attendee-Instructions.pdf> .

## **AGENDA**

- I. Call to Order
  - Establishment of Quorum
- II. Presentation by Director Isaac Choy, Department of Taxation, on actual tax revenue generated by current medical dispensary system
- III. Task Force Member discussion of the investigation findings of the Public Health and Safety Working Group
- IV. Presentation by Michael Backes on need for product safety regulations, the importance of product testing, and his experiences working in California's medical cannabis industry as its dual-use program was introduced
- V. Task Force Member decision-making on which of the Working Group recommendations to include in the Task Force Final Report to the Legislature

### **A. Tax Working Group recommendations:**

1. Hawaii lawmakers should pursue a legal and regulatory framework that is not subject to burdensome levels of regulation and taxation and promotes the development of a mature well-functioning market that can effectively compete with the gray market.
2. An adult-use cannabis excise tax should be levied on the final sale of cannabis products. The cannabis excise tax should be in addition to the GET of 4.5%, start out low in the initial phases of the market and increase as the market matures to a rate of 15%. The proposed excise tax rate is 5.0% for the first two years that the adult-use market is operational, 10% for years three and four, and 15% in the fifth year of operation and beyond. The State should receive 80% of cannabis excise tax revenues and the counties should receive 20% allocated to the county where the sale is made.
3. Parity in taxation between the medical and adult-use markets should occur only if the price of adult-use cannabis has experienced a percent decline from the price in the medical market prior to recreational legalization that is larger than the cannabis excise tax. If this trigger is not met, medical use patients should not be subject to the cannabis excise tax.

4. The number of licenses issued to producers and manufacturers should be limited and the regulatory agency should have discretion over the number of licenses issued to allow it to respond to market developments. This will encourage smaller players currently operating in the gray market to start operating legally; minimize the price differential between the legal market and the gray market; and promote competitiveness within the industry.
5. Legislation should provide the legal framework for the cannabis market and the regulatory agency should be given powers to develop, modify, and enforce regulations that are more technical in nature. To increase accountability and transparency, major decisions by the regulatory agency should be reviewed by an advisory board whose members include: 2 members from the cannabis industry; 1 member from the Department of Health; 1 member from the Department of Public Safety; and 3 members appointed by the Governor with at least one board member representing an island that is not Oahu.

**B. Social Equity Working Group recommendations:**

Cannabis Justice Reform

1. Cannabis should be completely legalized and de-scheduled subject to the civil licensing restrictions for cultivation, production, sell, transport, consumption, and other plant-touching activities as recommended here-in and enforced by an independent regulatory authority.
2. Legislation should provide a process for resentencing and record clearance of cannabis related criminal offenses in accordance with the following principles and the report prepared by the Last Prisoner Project and incorporated herein.
3. The State should fund direct payments; educational scholarships; job training and placement; and low interest home, vehicle, and business loans to any person, and their immediate family, whose record was cleared of any cannabis offense with the amounts based on the time served and the severity of the conviction. Higher remediation actions should be afforded to those who suffered larger harms.
4. The State should fund a new center at the William S. Richardson School of Law to hire supervisors and law students to review all past drug cases to identify individuals eligible for resentencing and record clearance; prepare the forms and administrative documentation to submit to the reviewing agency and the courts as applicable under the new record clearance process; attempt to locate and contact all benefitting individuals; and appear in court representing individuals seeking resentencing.

5. Regulation and enforcement of any dual-use system should be removed from any current agency, commission, or department and placed in an independent entity responsible for all regulations implementing the statutory requirements and enforcement of those requirements.
6. The State should comprehensively legalize and de-schedule cannabis as a first step towards preventing further abuses of the civil asset forfeiture system and fund direct grants; educational scholarships; job training and placement; and/or low interest home, vehicle, and business loans directly to the individuals and their families whose property was subject to civil asset forfeiture.

#### Service Equity

1. Legislation should:
  - i. Prohibit employers from discriminating against a person in hiring, termination, or any term or condition of employment, or otherwise penalize a person, if the discrimination is based upon either the person's possession of a valid medical cannabis certification or the person's positive drug test for cannabis components or metabolites, unless the person used, possessed, or was impaired on the premises of the place of employment or during the hours of employment.
  - ii. Treat off-duty cannabis use in the same manner as off-duty alcohol use. So long as off-duty use does not affect job performance, employers must refrain from terminating workers for recreational use. These protections can be enhanced for certified medical use patients.
  - iii. Not apply these protections to professions that either require drug tests or prohibit drug use under the ethical or legal restrictions of that profession, or to use or possession on the job, on the employer's property, on federal property, or on state property (except as allowed under the regulations governing the public use of cannabis).

Except in the cases just mentioned, violations of these protections should not be based solely on failure of a drug test; job impairment, cannabis use on the job, cannabis possession on employer property, or cannabis component test results from a blood test above a certain per se threshold should be the standards for adverse actions by employers under this legislation.

2. Consumption and possession of cannabis should be treated by the family courts in the same manner as alcohol consumption and alcohol abuse; cannabis use and possession must be shown on a case-by-case basis to adversely affect the child's physical or emotional well-being as a factor in

determining custody, not the simple fact of cannabis use or possession as a *per se* bar to custody.

3. Legislation should extend the protections of Chapter 28, Section 521-39 of the Hawai'i Revised Statutes to include all legal use, possession, and growing allowed under a dual-use system (subject to the limitations contained in those provisions). Such protections should also apply to all housing administered by the Hawai'i Public Housing Authority, like the language of SB 2870 (2022) (along with the other provisions of SB 2870 if extended to include legal use). Legal cannabis use and possession should not be a bar to receiving any state services administered by the Statewide Office on Homelessness and Housing Solutions.
4. Legislation should make it illegal for insurance companies to deny any policy, voluntarily entered by the insurer, on any basis concerning a legal use of cannabis in the State of Hawaii.
5. The State should develop programs to educate landlords on how best to safely interact with the legal cannabis industry; fund grants or the first few years of rent for new small business and equity licensees; provide property insurance to small business and equity licensees; and extend the current prohibition on counties creating zoning or safety code requirements that are more strict than the laws of the state with regards to cannabis licensees.

The State should keep, but modify, its current restrictions on the locations of retail, manufacturing, and grow locations to also include new license types and protect children but provide accessible locations for all license types across the islands. The state should remove restrictions that prevent small growers from using their land for cannabis cultivation, including, but not limited to, the restriction that all cultivation must take place at least 500 feet from a residence on agricultural land.

6. The State should require the Department of Commerce and Consumer Affairs Department of Financial Institutions to fast track the approval of any state-chartered financial institution that presents a plan for providing services to the cannabis industry in Hawai'i; pursue methods of incentivizing state-chartered financial institutions to submit such applications; and subsidize access to financial services for small businesses and social equity licensees in Hawai'i.

The State should itself offer affordable, basic financial services, including deposits and check writing, to all cannabis business licensees in good standing under the State dual-use regulatory scheme to promote participation in the legal industry, and foster a "well regulated market" as envisioned by current federal cannabis enforcement priorities.

7. The State should investigate which professional service providers are currently hindered in their provision of services to a dual-use cannabis industry, both licensed businesses and legal consumers, and enshrine in

statute or administrative rules protections and incentives for those service providers to engage with legal participants in the dual-use system.

8. The regulatory agency should have a Social Equity Board separate from its operating board and advisory board with specified authorities and powers. The State should mandate that the regulatory authority require (or provide large incentives for) cannabis companies to have a triple bottom line and report on this to the authority; issue a bi-annual report card for each company on their impact and use this report card in considering the renewal of licenses. Companies should be allowed to add certifications such as LEED certified buildings, regenerative agricultural practice certifications, local organic inputs, and the like to achieve a higher report card score and more incentives.

#### Equity in the Market

1. The rules and regulations for adult-use business licensure should be limited and have low barriers to entry to allow the most individuals to participate. Applicants who qualify as a Social Equity Applicant (SEA) should be prioritized in the licensure process and in an initial inspection process to operate. The regulatory agency should have adequate dedicated staff to timely review and prioritize SEA applications.
2. The regulatory agency should have a dedicated office to carry out functions like the Small Business Association catered toward SEAs to oversee the provision of technical assistance to SEAs during the application process to ensure they are able to meet all statutory requirements and administrative rules and pass the initial inspection, and financial assistance to SEAs.
3. Immediately after passage of legislation, the Governor's Office should oversee, or designate an entity, to oversee the transition from when the law is passed and when the regulatory agency can adopt rules and start licensing new cannabis businesses.

The State should immediately launch the adult-use market by allowing sales of adult-use cannabis only by the current medical cannabis license holders, if licensees so choose, until the new administering body is operational after the legislation is passed to deter grey market activity and provide tested regulated cannabis to the public for purchase.

4. The State should also allow qualifying social equity individuals to produce, manufacture, and wholesale cannabis products that meet the current testing requirements to the current medical cannabis license holders in a new supply chain diversification during the interim period to ensure that the market has a supply of cannabis products to satisfy the new increase in demand from adult-use sales while still maintaining supply for medical use patients.
5. The State, counties, and the regulatory agency should work together to: sponsor shared use facilities for social equity applicants on each island; offer

low interest loans to qualifying social equity applicants to provide access to new streams of capital; and offer low-cost small cultivation licenses to increase participation from social equity individuals.

6. The State should implement race-specific language into labor practices in the adult-use cannabis program to promote diversity in the cannabis workforce.
7. Any applicant for any license in an adult-use cannabis program who is of Native Hawaiian descent shall qualify as a Social Equity Applicant (SEA).

At least 75% of any social equity applicant licensed business must be owned and controlled by a social equity applicant with all other owners identified at the level of the individual.

### **C. Market Structure Working Group recommendations:**

1. The market structure should not create a stand-alone industry that requires a large amount of individual oversight by the regulatory authority and regulatory overlap with current agencies and rules. Most of the rules applicable to the cannabis market: consumer protection, common law nuisance, county building safety/building codes, AOA covenants, tax compliance, business registration requirements, labor laws, insurance requirements, etc., already exist and do not need to be created sui generis. Thus, restrictions should not be stronger than the laws and restrictions that currently govern alcohol breweries, distilleries, distributors, and retail locations.
2. The licensing structure should be horizontal, with a variety of licenses for all plant-touching elements of the supply chain, and no limits on how many different types of licenses a licensee may acquire (i.e., voluntary vertical integration).
3. Home grown cannabis plants for personal use by those over the age of 21 should allow up to 20 plants without a license.
4. The regulatory agency should be given authority to establish license fees, the number of licenses, and other licensing requirements to prevent the oversupply and undersupply of cannabis in the market.
5. The State should establish geographic indicators, appellations, or other forms of intellectual property or branding protection, like the Department of Agriculture's "Seals of Quality" program, and potentially in partnership with the Hawaii Tourism Authority, to protect and promote Hawaii's unique genetics and world-renown brand.
6. There should be an independent regulatory body that consists of a smaller oversight board supported by a larger advisory board yielding the powers and duties to regulate and control the adult-use and medical use cannabis licensing and registration programs.

#### **D. Medical Use Working Group recommendations:**

##### Medical Considerations

1. Legislation should require healthcare facilities to allow the use of medical cannabis on their premises for terminally ill patients with a valid medical cannabis card or/ recommendation from their physician.
2. Higher THC content per serving and per package should be allowed in medical-use products than for adult-use, due to the special needs of medical use patients, especially those in palliative care.
3. Medical dispensaries should be authorized to provide delivery services and curbside pick up to protect patient health and privacy and to ensure access by homebound patients, those in palliative care, and those with compromised immunity due to pre-existing health conditions.
4. The State should eliminate the list of qualifying conditions as a requirement for registration in the medical cannabis registry and respect the doctor-patient relationship by allowing qualifying physicians and/or APRNs to decide for medical use of cannabis.
5. Registered medical use patients should retain their right to grow their own cannabis plants and/or designate a caregiver as currently provided by law.
6. Registered medical use patients should remain exempt from any new taxes that may be levied on the sale of cannabis or cannabis products under an adult-use program.
7. All cannabis and manufactured cannabis products, intended for sale or distribution, should be subject to the same testing standards currently provided by law, to ensure safety and quality of all commercial cannabis statewide for medical use.
8. Medical cannabis retail locations should be required to maintain a dedicated inventory for medical use patients and offer a private meeting space for patient consultation with staff members.
9. All existing medical cannabis licensees should be allowed to continue to operate without disruption as the adult-use program is operationalized.
10. Current legislation and regulations should be reviewed and amended to allow for expanded production and wholesale limits in anticipation of increased demand.

##### Patient Protections

1. Legislation should provide employment protections for registered medical use patients covering hiring, discipline, and termination. A positive test for



cannabis metabolites shall not be proof of impairment on the job, and employers and insurance companies must be prohibited from medical discrimination.

2. Legislation should prohibit law enforcement agencies from denying or revoking the right to own permitted firearms, solely due to a person's status as a registered medical use patient.
3. Legislation should permit registered medical use patients to possess medical cannabis and cannabis products for personal use when traveling between counties within the State.
4. Legislation should provide patient reimbursement for approved medical cannabis products by state-regulated insurers.

#### Patient and Public Health Education

1. The Department of Health should develop a robust education campaign aimed at reducing ignorance and stigma surrounding the medical use of cannabis for medical professionals, healthcare administrators, and insurance providers.
2. The Department of Health should develop and deploy a public health education campaign about medical cannabis use, safety considerations, and how to identify signs of psychological dependence.
3. The University of Hawai'i John A Burns School of Medicine should include evidence-based and unbiased medical cannabis education as part of its curriculum for medical professionals like the National Council on State Boards of Nursing's 2018 recommendation for Caring for the Medical Marijuana Patient.

#### **E. Public Health and Safety Working Group recommendations:**

1. The State should adopt the recommendations of the 2020 American Public Health Association Policy Statement, "A Public Health Approach to Regulating Commercially Legalized Cannabis" (Policy Number 20206) to: provide protection to children and youth and other vulnerable and marginalized populations; minimize harm to the public; and monitor patterns of cannabis use and related public health and safety outcomes.
2. The Department of Health should establish a comprehensive surveillance program that: monitors cannabis use and exposure trends and risk associations among Hawaii's population; quantifies adverse events, including, but not limited to hospitalizations and emergency department visits, impaired driving and traffic-related fatalities; and cannabis dependence or addiction treatment rates; and monitors adverse effects from prolonged cannabis use, particularly cannabinoid hyperemesis syndrome and outcomes among medical use patients, such as drug interactions.

3. The Department of Health should convene a Public Health Advisory Committee analogous to the Colorado Department of Public Health and Environment Retail Marijuana Public Health Advisory Committee comprised of health care professionals who have expertise in fields that intersect with cannabis use including poison control, neuropsychology, laboratory sciences, pharmacology, medical toxicology, emergency medicine, psychiatry, pediatric emergency medicine, neonatology, addiction medicine, and public health.

Duties of the advisory committee should include: a review of current scientific literature on the health effects of cannabis use to come to consensus on population health effects; translation into public health messages; recommendation of public health policies; and identification and prioritization of gaps in the science important to public health.

VI. Next Meeting: November 14, 2022

- The agenda and meeting materials will be made available on the Department of Health website at: <https://health.hawaii.gov/medicalcannabis/>

VII. Meeting Adjourned

Note: Public testimony will be accepted on each agenda item prior to discussion of that agenda item. To ensure adequate time for the full agenda, testimony should address only the specific agenda item being considered. Due to the anticipated volume of testimony, oral testimony will be limited to two (2) minutes per person.

If you need an auxiliary aid/service or other accommodation due to a disability, to participate in the meeting, please contact Teresa Esteves at (808) 927-3452 or email [omccr@doh.hawaii.gov](mailto:omccr@doh.hawaii.gov) as soon as possible, preferably at least three (3) **working days** prior to the meeting to allow adequate time to fulfill your request. If a request is received after the three (3) day window, we will try to obtain the auxiliary aid/service or accommodation, but we cannot guarantee that the request will be fulfilled.

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