GROUP 1: Appropriate number/location

IN INTRODUCTORY SECTION(S):

- Approximately 13,000 patients now. Other states have imposed hard limits on the number of dispensaries allowed statewide, but those limits typically result in a ratio of approximately one dispensary for every 500 to 1000 patients. Rather than setting a firm number, we believe setting a ratio is more appropriate; this will allow for growth and flexibility in the program. We believe that a ratio of approximately one dispensary for every 500 patients will allow sufficient dispensaries to reach all qualifying patients while keeping the number small and manageable enough to allow for sufficient oversight and regulation.

- Recognize that patients in urban areas are more limited in their ability to grow their own medicine; as such, allow the Department of Health flexibility to offer more licenses for dispensaries in urban areas.

- Nothing in this chapter shall limit the rights of qualifying patients and/or caregivers to acquire, possess, cultivate, manufacture, deliver, transfer, transport, supply, sell or dispense as set forth in HRS chapter 329.

I. DEFINITIONS

"**Department**" shall mean Department of Health unless otherwise noted.

"**License**" means a license issued by the Department pursuant to this chapter. There shall be both dispensary licenses and producer licenses, though dispensaries shall be entitled to produce without obtaining a separate license.

"**Nonprofit medical cannabis dispensary**" (or "**dispensary**") is a not-for-profit entity that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, supplies, sells or dispenses medical cannabis, related products, and/or related supplies and educational materials to qualified patients, their caregivers, other dispensaries, and/or producers. A dispensary may be a producer without obtaining a producer license.

"**Producer**" is an entity that is licensed by the Department to produce medical cannabis, related products, and/or related supplies and sell, deliver, transport or distribute medical cannabis solely to nonprofit medical cannabis dispensaries or other producers. [Note: may want to reference HRS 329-1 definition of "production" here.]

"**Public School**" shall have the same meaning as in HRS § 302A-101.

II. FORMULA FOR DETERMINING THE NUMBER OF LICENSES

A. DISPENSARY LICENSES

The Department shall determine the number of licenses available for nonprofit medical cannabis dispensaries, subject to the following:

1. The Department shall offer a minimum of one license for a dispensary to operate within each county, with the exception of Kalawao County;

2. The Department shall issue licenses by county in proportion to patient density within each county, with patient density determined according to a patient's county of residency rather than the county in which the patient is certified, provided that the Department may allocate additional licenses for dispensaries to operate in the City & County of Honolulu.

3. Upon initiation of the dispensary program, the Department shall offer a minimum of twenty-six licenses, representing a ratio of approximately one dispensary for every 500 patients;

4. As the number of patients fluctuates, the Department shall endeavor to offer sufficient licenses such that the ratio of qualified patients to dispensary does not exceed 500:1, offering more licenses as necessary to achieve this goal; provided that this subsection shall not create a cause of action against the Department or any State official for failing to offer additional licenses due to the ratio exceeding 500:1 unless the ratio exceeds 1500:1, in which case a qualified patient and/or caregiver may bring

a claim for injunctive relief only to require the Department to issue additional licenses to reduce the ratio of qualifying patients to dispensary.

B. PRODUCER LICENSES

1. The Department shall issue licenses to producers. Producers may only distribute cannabis, related products and/or related supplies to dispensaries and/or other producers.

2. Producers may acquire, possess, cultivate, manufacture, deliver, transfer, transport, supply, sell or dispense no more than _____ plants at any one time.

Note: Approximately 39,000 plants needed to supply 13,000 patients.

- *500 plants/producer = 78 producers needed*
- *1000 plants/producer = 39 producers needed*

3. Upon initiation of the dispensary program, the Department shall offer a minimum of _____ producer licenses;

4. As the number of patients and dispensaries fluctuates, the Department shall endeavor to offer sufficient producer licenses such that dispensaries are able to obtain sufficient supply, offering more licenses as necessary to achieve this goal;

5. Dispensaries may produce cannabis, but must obtain a separate producer license to do so.

Note: 26 dispensaries→ approximately 1,500 plants per dispensary (if growing all internally)

III. ZONING

- Dispensaries and producers shall comply with County zoning ordinances, and each County shall continue to have authority over zoning matters; provided that no County may enact or enforce any zoning ordinance that applies only to (or otherwise targets for disproportionately restrictive treatment) a dispensary and/or producer.
- No dispensary or producer shall be located within 500 feet of a public school.

IV. PROTECTION AGAINST PROSECUTION

- HRS § 329-125 shall be amended to offer same protections (affirmative defense) to dispensaries/producers.
- HRS § 329-122 shall be amended to clarify that patients, caregivers, producers, and dispensaries shall be permitted to transport cannabis within Hawaii and between the Hawaiian islands.
- Nothing in this chapter shall indicate that an individual has a defense against prosecution pursuant to federal law for acquiring, possessing, cultivating, manufacturing, delivering, transferring, transporting, supplying, selling or dispensing cannabis, related products, and/or related supplies.

V. TRANSPORTATION

See above under protection against prosecution

- In the event that there is no licensed dispensary on an island, one or more dispensaries on another island may request written permission from the Department to allow a dispensary employee or owner to deliver cannabis, related products, and/or related supplies to patients and/or caregivers on the island that lacks a dispensary. The Department shall grant such written permission within 60 days unless good cause exists to deny the request.
- The owner or employee of the dispensary shall maintain possession of the cannabis, related products, and/or related supplies at all times until delivered to a qualifying patient or caregiver.

Group 2: Cultivation/production/manufacturing issues – Range and type of products

The number of plants, and level of inventory in dispensaries should not be specified in statute. Individual dispensary operators should be made aware of potential increases in federal penalties, and can make their own decisions accordingly.

This is because dispensaries need to be able to react to changes in demand, and potential crop loss by producing more or less medical cannabis.

Dispensaries shouldn't be required to produce their own, but should be able to if they choose to. Dispensaries and producers should have separate licensure and dispensaries that wish to grow their own should be required to acquire production licenses as well. They should be able to trade

or sell their produce to other dispensaries so as to insure that dispensaries maintain a wide variety of strains and products that meet a broad cross section of patient needs. Trades or sales between dispensaries need to be reflected in dispensary inventory tracking software and subject to surprise audits by the Department of Health.

Hawaii's current caregivers and patients must be required to continue growing their own cannabis, because they have been required to do so for 14 years, current growers have been developing their production systems with extensive investment requirements in terms of time, knowledge and infrastructure. Patients that have been able to tailor a specific genetic to their needs must not be deprived of this, but should have access to a dispensary in cases of crop failure, so as to ensure a consistent supply. Patients will still be subject to the existing medical cannabis law that includes a limit on the amount of cannabis that may be in their possession.

Both indoor and outdoor growing should be permitted. Both systems have certain benefits and costs:

Indoor growing has higher capital requirements, has certain benefits in terms of pest control. Indoor growing also has much higher energy requirements than outdoor grows and increased security.

Do we need to define Medical Cannabis as an “agricultural commodity” within HRS? (Research point)

All types of products should be allowed. Medical cannabis, and related products such as food – tinctures, aerosols, ointments, and extracts, as well as seeds, clones and all plant material. The latter should be for patients and caregivers that grow their own.

All products should be in opaque packaging without pictographic labeling, and with all necessary labeling: levels of various cannabinoids, the media used in extractions as applicable, the name or id number of the grower, and disclaimer that this product is intended only for licensed patients.

There should be no signage at cultivation centers. Dispensaries should be limited to a small sign (the size and content of which shall be specified by DOH) and opaque windows. Cannabis should not be immediately visible upon entering the facilities, but instead, this must be behind a second door with access limited to patients and caregivers.

Group 3: Administrative/regulator structure – Taxes and Fees structure

Taxes and fees

Policy subcommittee:

- Fund program primarily with application and licensing fees
- Jonathan has structure for taxes and fees, or we could leave the amount flexible
- New staff would be funded by fees

Need to appropriate start-up money

Not sure how easy it would be to appropriate

Should be viewed as part of the healthcare system

Creagan's recommendation is a lower application fee

Consensus: Jonathan's recommendation is $20k to apply and then $18k refunded for an unsuccessful application, then annual fee to be determined by the Department

$20k would cover DOH staffing costs, etc.

Washington state has a medical marijuana board, but nothing similar in HI

Community Health Centers that could be dispensaries?

Difficult to mix marijuana with anything federally regulated

Community Health Centers are federally funded

No separate tax (no other state has)

Consensus: Jonathan's proposal of $20k and annual license fee to be determined by the Department

Flow of product through a dispensary might make a difference (big vs. small)

Separate taxes on liquor and tobacco (sin taxes) DOJ takes the lead on these regulations

$20k application fee, if app is successful, covers the first year of licensing

Up-front fee, at the time of application submission

Administrative/Regulatory structure

Growers and producers/manufacturers should also have to apply to participate in the industry

Definition of dispensary in the policy subcommittee report

Dispensary should have largest application and licensing fee

Growers should have a lower fees, Rep Creagan wants a tiered structure for growers that only grow a small amount of the product

No tax besides GET

Using "producer"

Co-ops?

Hard to regulate

Undecided about fees for growers

State agencies to regulate? DOH should license dispensaries ("shall issue the licenses for dispensaries")

Consensus: Should stay in DOH as much as possible

Potential for appropriation to get it started? We can ask for a General Fund appropriation

Staff positions for the Department of Health

Health educator

Need a licensing person and a field inspector

Need to ask DOH what they need

Penalties for unauthorized distribution? Subject to annual audit, can be unannounced audits by the DOH, one unauthorized sale means automatic revocation

Penalty for irregular audit, the dispensary has 30 days to respond and clarify (set up a hearing process)

Dispensary shouldn't be penalized, but the employee should be

A dispensary shall immediately report unauthorized sales

Any person involved in knowingly giving an authorized sale shall be prosecuted

DOH can set a fine for unauthorized sale if the dispensary doesn't report it

Open question on penalty, if a penalty is imposed, we don't have to decide it, the Department can

Penalties for producers? Unauthorized sales: same penalty structure

Producer should expect formal and unannounced audits

Producers will have a certain amount of plants

In statute: producer and dispenser shall employ seed-to-sale tracking software

Target date? DOH needs to make rules and have hearings on rules, so target date of January 1, 2017 for no less than one dispensary per county actively selling product. (Dispensary CANNOT open until January 2017.) DOH must issue a license for producers and dispensaries June 1, 2016 for no less than one dispensary and producer in each county licensed

Back to application fees for producers

Anyone more than seven plants isn't a caregiver anymore

$2,000 to apply, $1,000 refunded if unsuccessful, with an annual renewal fee to be determined by the department

What state agencies will be involved to do which tasks? The dispensary system shall operate within the Department of Health. The Department shall license dispensaries, conduct audits (announced and unannounced), oversee screening, maintain patient database, etc.

Licensure and/or registration requirements for cultivators/producers: Producers will pay an application fee of $2,000. $1,000 will be refunded if an application is unsuccessful. The ongoing annual renewal fee will be determined by the Department of Health.

Application fees, registration/licensing fee and amount for dispensaries? Applications to set up a dispensary will cost $20,000. Applications meeting a minimum threshold for security requirements set forth in statute shall be entered into a lottery, to be administered by the

Department of Health. Applications that are unsuccessful in the lottery shall receive a refund of $18,000. The ongoing annual license fee shall be determined by the Department (this is the way it is done in Minnesota).

How much startup funds will be needed as well as ongoing program funds? We suggest asking for a modest appropriation from the General Fund, to be determined by the Department of Health's budgetary requirements. After the first appropriation, program costs will be covered by application and licensing fees.

Shall proposed legislation include any target dates or implementation triggers regarding licensing/registration of dispensaries/cultivation centers? Legislation shall include target dates for issuing at least one license in each county, and a target date for dispensaries being up and running in each county. The Department shall issue at least one producer license and one dispensary license in each County by June 1, 2016, given sufficient applications, and dispensaries may become operational on January 1, 2017. This will provide a span of time during which the Department of Health can streamline regulatory operations.

For purposes of establishing system of dispensaries/cultivation centers and related licensing, regulation, any specific staff positions to be created? The Department of Health should add a medical marijuana health educator on staff. In addition, the Department of Health will likely need to add a position for a person to oversee licensing and audits once dispensaries are up and running.

Establish any penalties for unauthorized sales/distribution by dispensaries/cultivation centers/qualified patients? Both producers and dispensaries will be audited once a year, announced, and should expect surprise audits periodically throughout the year. For irregularities found in audits, the dispensary will have thirty days to respond. The Department of Health shall establish a hearing process for such irregularities. Dispensaries and producers shall report any unauthorized sale immediately. The penalty for an unauthorized sale shall be determined by the Department, and may include an automatic revocation of the license. If a dispensary or producer immediately reports an unauthorized sale, the entity shall be protected from prosecution, and the individual employee involved shall be held responsible.

NOTE: "Producer" is an entity that is licensed by the Department of Health to produce medical cannabis, related products, and/or related supplies and sell, deliver, transport or distribute medical cannabis solely to nonprofit medical cannabis dispensaries or other producers. "Dispensary" means the storefront housing a retail operation that dispenses medical marijuana to qualifying patients.

Taxes: Purchases and wholesale sales of medical marijuana shall be subject to GET, which is 0.5% wholesale, and 4.0% or 4.5% retail (depending on County).

<u>Group 4: Methods of ensuring public safety and security of supply</u>

Security of dispensaries and/or cultivation areas from theft

- Minimum security requirements for dispensaries
    - Double door entry
    - ID requirements for patient entry

- Video monitoring/recording
- Security measures (security guard, alarm system, exterior lighting)
- Secure storage for on-site material

- Minimum security requirements for cultivators
  - Video monitoring/recording
  - Black out/security fencing
  - Security measures
  - Secure storage for material being processed
- Regulation of owners and staff
  - Exclusion for any type of felony
  - Exclusion for select misdemeanors that could threaten safety (ie. Tampering with govt records, computer crime, deceptive business crimes, perjury related offenses, identity theft)
- Inventory control to prevent diversion
  - Centralized software for tracking material (ie. from seed to sale)
  - Maintained by DOH
  - 24-hour connectivity for appropriate state agencies (DOH, PSD)
  - Tracking of individual patient allowances
  - Packaging to allow for law enforcement verification
  - Criminal offenses for Dispensary/Grow Site non-compliance
  - Centralized tracking of unused material destruction
  - Potential off-site regulated destruction

    - Centralized tracking of dispensary/cultivator allowances
    - Allowances based on patient specific needs
    - Regulations for Cultivator to Dispensary transportation (ie. Gun transport rules)

- Insuring that patients have access to safe material
    - Availability of verifiable lab testing
    - Allowances for collective patient growing
        - No outside distribution allowed
        - Must comply with dispensary/cultivator regulations
    - Need to address providing supply for low patient count islands (ie. Lanai)

- Federal Interface
    - Assuming an environment where the Federal Government will continue to ignore the medical use of Marijuana
    - Need specific allowances for inter-island Transportation
        - Maximum amounts difficult to determine for individual patient use
        - Address the statutory confusion that currently exists regarding transportation in public
        - Have DOT address specific guidelines for inter-island transportation
        - Hold harmless legislation to protect local/state law enforcement
        - Prevent liability of not adhering to federal law
    - Areas where use is prohibited
        - Follow current guidelines (ie. Not in public, federal property, schools)

- Movement of material to labs for testing
    - De minimis sampling currently allowable (ie. Very low concentration extract)
    - Centralized tracking of samples being submitted
    - Third party collection and documentation of sampling
        - Certified and licensed by DOH
    - Statutory protection of local labs to possess material being evaluated
        - Labs will need to possess raw material for contamination testing
- Visitors to Hawaii
    - Only available to locally certified patients for now

Group 5: Business requirements for licensed dispensaries

Education and Training

The Task Force considers Information, education and training related to medical marijuana to be core public health components of a dispensary program. It is recommended that

1. the DOH take the lead in coordinating the assessment needs and development and delivery of medical marijuana information, education and training services both directly and in collaboration with community partner agencies.
2. these activities should be science or practice based.
3. services should target the following groups: Hawaii physicians and other health professionals, patients and care givers, law enforcement, youth under 18 years both in and out of school, law and policy makers and the general public.
4. the DOH in conjunction with DCCA develop standards of practice or certifications and training requirements for supervisors and staff working in dispensaries to ensure services to patients are of high quality and in keeping with the law.
5. one FTE public health educator staff and adequate resources to support this staff person should be made available to DOH in an ongoing manner.

The information, education and training should be accessible to all target populations. The DOH should consider the following methodologies among others:

- Developing and maintaining a website with up to date information on Hawaii's program and a full range of topic
- Organizing CME and other professional trainings on the medial use of marijuana and the interface of physicians with the program
- Organizing meetings and conferences that bring stakeholders together to share information
- Monitor and make available new information related to medical use of marijuana in other states/countries
- Developing written materials on the program for target populations
- Coordinating meetings of dispensary managers, physicians and patients to foster open dialogue on how to improve services
- Provide electronic program and other medical marijuana updates to those who sign up
- Collaborate with DOE and community agencies to support efforts to prevention youth marijuana use and an understanding of the purpose of the medical marijuana program is not recreational
- Collaborate with DOT and other agencies to discourage driving under the influence
- Coordinate efforts to develop clear and effective labeling for medical marijuana and related products to inform patients and physicians
- Coordinate efforts to develop rules and policy for use of safe and child proof containers to prevent child access to medical marijuana
- Develop materials and coordinate trainings for law enforcement personnel so they understand Hawaii's MMJ laws and how the program is run
- Coordinate with other agencies to collect and analyze marijuana and medical marijuana related data from a range of sources to monitor legal and illegal use and any impact on public health
- Develop annual medical marijuana program report to provide transparency of the program