The California Medical Marijuana Regulation and Safety Act

On September 11, 2015, the California Legislature passed a series of bills that together would establish California's first statewide regulatory system for medical cannabis businesses. AB 266, AB 243, and SB 643 each contain key provisions of the Medical Marijuana Regulation and Safety Act. These laws would govern cultivating, processing, transporting, testing, and distributing medical cannabis to qualified patients. Gov. Jerry Brown has 12 days to sign or veto the bills once he formally receives them.

Which agency regulates medical cannabis?

Several agencies would regulate aspects of the industry, but primary authority would be given to the Department of Consumer Affairs. The department would be home to a new Bureau of Medical Marijuana Regulation (BMMR), which would oversee the program and share licensing authority for various types of businesses, along with the Department of Food and Agriculture (cultivators) and the State Department of Public Health (testing labs and manufacturers).

When does the transition happen?

Businesses may continue to operate as they do today until at least January 1, 2018, when the formal state licensing process is expected to begin. At that point, existing businesses could continue to operate until their application has been acted on. The agencies involved would have until January 1, 2017 to write and adopt rules.

Key Provisions

- **Protections for Businesses and Employees.** The new framework expressly protects business owners, employees, landlords, and others from both criminal law and civil asset forfeiture so long as they follow the requirements.
- **Many Types of Licenses.** Seventeen different types of annual businesses licenses would be available, including indoor and outdoor cultivators of different sizes, plant nurseries, processors, testing labs, and dispensaries. A new class of business licenses — distributors — would be responsible for all transport between businesses.
- **Collectives and Cooperatives Would Get Phased Out — Slowly.** The system established in these bills would not license collectives and cooperates as they exist today, but the transition is gradual. They could continue to operate in compliance with local rules until at least January 1, 2018. Provisions within the bills state that the collective/cooperative defense would remain in effect for one year after the department announces that business licenses are being issued.
- **Patients Can Still Grow Their Own.** Patients could continue to grow their own medical marijuana (except where local governments have banned personal cultivation). However, grow space would be limited to 100 square feet, and patients would be prohibited from giving, selling, or donating medical cannabis to another person without becoming licensed. Caregivers

— which are narrowly defined under California's voter-enacted law — could grow for up to five patients, and would be limited to 500 square feet. (Note: California legislation cannot legally amend a voter-enacted law. Thus this limitation would almost surely be overturned to the extent (if any) it was found to conflict with Prop. 215.)

- **Cultivator Space Would Be Capped.** Licensed outdoor cultivators would be limited to one-acre spaces, while indoor cultivators would be limited to one-half acre.
- **Testing and Labeling Required.** Medical cannabis sold to patients would be subject to specific requirements, including testing for potency and contaminants, tamper-resistant packaging, and labeling.
- **Local Government Authority is Broad.** Local government must issue a permit to a local business in order for it to lawfully operate. Local governments could also assist in enforcing state law, creating their own standards in addition to state standards, and taxing business activity.
- **Some Vertical Integration is Allowed.** It is possible for some types of businesses to have licenses in more than one category (for instance, some cultivators could own a dispensary), although the ability to own multiple types is limited. Businesses that are allowed to operate in several different categories by July 1, 2015 could continue to do so until at least 2026.
- **Criminal Histories Could Be a Problem**. A business license applicant *could* be denied a license if he or she has a felony record that includes offenses considered to be related to the qualifications, functions, or duties of the business. These include a conviction for the illegal possession for sale, sale, manufacture, transportation, or cultivation of marijuana.
- **Deliveries Are Allowed — Except Where They Aren't.** By default, the larger dispensary license holders can make deliveries to their patients. But local government can ban deliveries via ordinances. There is no separate license for delivery services. Deliveries or shipments through areas that otherwise prohibit businesses would be protected.
- **Medical Cannabis Tracked During the Process.** The system would impose a "track and trace" system that requires that medical cannabis be tracked from the earliest stages through sale. Identifying names of patients and medical conditions would be confidential.
- **For-Profit and Non-California Investors and Owners Allowed.** Unlike current law, businesses would not be prohibited from cultivating or distributing marijuana for profit. In addition, there are no requirements that investors or owners be residents of California.
- **New Standards for Cultivators.** The California Department of Food and Agriculture would issue pesticide standards and a standard for organic medical cannabis.

There is much yet to do. Once signed into law, rules must be written to implement the law, and the legislature could change these provisions and others. But the modernization of California's medical marijuana law is long overdue. A regulated system would be a huge improvement for patients, communities, and providers. Such a system would better protect providers from federal authorities and allow patients to have a safe, tested supply of medical cannabis. Not all the provisions are ideal, but taken as whole, the legislation passed by California's lawmakers is a thoughtful and reasonable approach to regulation.