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MEMORANDUM

To: Chairman Olson
Members of the Special Committee on Medical Marijuana

From: Jason B. Long, Senior Assistant Revisor

Date: December 9, 2022

Subject: Policy issues raised by conferees at the committee meetings of October 12 & 19, 2022

The following is an itemization of the policy issues raised by the various conferees during the meetings of the Special Committee on Medical Marijuana on October 12 & 19, 2022. Each item provides the conferee raising the issue and a brief description of the issue. For purposes of organizational clarity, the issues related to similar aspects of the proposed legislation have been categorized together.

General Administration of Regulatory Act

1. Effective dates of the Act and rules and regulations.
 - The Division of Alcoholic Beverage Control (ABC) and the State Board of Healing Arts (SBHA) requested that the effective dates for any legislation and any dates for adoption of rules and regulations provide adequate time for agencies to promulgate the necessary regulations and acquire the necessary software systems.
 - The Kansas Cannabis Coalition suggested a shorter timeline for full implementation of the legislation.
2. Advisory committee composition.
 - Dr. Voith recommended that no representatives of the cannabis industry be members of any Kansas Department of Health and Environment (KDHE) advisory committee on medical marijuana.
 - The Kansas Medical Society suggested that the composition of the advisory committee in the proposed legislation is flawed.

3. Pilot program. ABC requested that if a pilot program is required then the agency be given more than 45 days to establish the program. Also, the agency suggested such a program may provide an unfair competitive advantage.
4. Public education. The law enforcement associations noted that under the proposed legislation no state agency is assigned the responsibility for educating the public on the use and storage of medical marijuana.
5. Medical Research.
 - Juanita Ramos recommended creating a public-private partnership to establish a research and development clinical trial program in Kansas as part of the legislation.
 - Todd Scattini also encouraged engaging postsecondary institutions to establish medical research programs for cannabis.

Patient and Caregiver Regulation

6. Patient/caregiver registration.
 - Greenlight noted that difficult and expensive regulations could keep eligible patients from registering which could lead to more black-market activity.
 - The National Organization for the Reform of Marijuana Laws (NORML) recommended nominal patient fees to provide easy access to medical marijuana.
 - Dr. Voth recommended registered patients submit to regular drug testing, and if the patient used any unapproved or illegal substances the patient would be disqualified from the program.
7. K-TRACS information and access.
 - The Board of Pharmacy requested that physicians not make reports to K-TRACS but use the system to review a patient's medical history. The Board noted that retail dispensaries could report to K-TRACS at the time of each dispensation of medical marijuana to a patient.
 - The Board of Pharmacy also suggested that the Board could be authorized by the legislation to provide redacted K-TRACS information to the other regulatory agencies as needed for those agencies to perform their regulatory duties.
 - The Kansas Cannabis Coalition expressed concerns with retail dispensary personnel accessing K-TRACS as a potential violation of HIPPA.

- The Board of Pharmacy requested the legislation update the term “physician designee” to “delegate” in conformity with previous amendments to the Prescription Monitoring Program Act.
8. Medical evaluation requirements.
- Dr. Voth recommended each registered patient have a detailed medical evaluation by a physician with significant experience in the condition being treated. He also recommended that the evaluation be reviewed by a second physician, and that there be a review of all past lab and test results, as well as the patient’s medical history.
 - The Kansas African American Affairs Commission (KAAAC) recommended allowing for patient registration through a medical provider by low-income and uninsured patients that do not have a long-term relationship with a primary care physician.
9. Standard of care.
- The SBHA requested the legislation use one of its suggested solutions as an alternative for the term “minimum standards of care.”
 - Dr. Voth recommended that failure by a physician to document the indications, medical disorders, status of disorder, and benefit or detriment from use of cannabis should be considered a deviation from “standard of care” and such a physician would be subject to discipline and civil and criminal liability.
 - Dr. Voth also recommended that there be no statutory provisions granting medical providers with immunity from civil and criminal liability.
 - The Kansas Medical Society questioned the grant of immunity for physicians from civil and criminal liability.
10. Physician regulatory requirements. Dr. Adinoff cautioned against imposing onerous regulations on physicians as it could result in fewer providers willing to make medical marijuana treatment recommendations.
11. Qualifying medical conditions.
- Dykema Gossett noted that including chronic pain as a qualifying medical condition could lead to numerous young adults using this as a means of qualifying for a written recommendation.

- Dr. Voth recommended that chronic pain (preferably neuropathic) should be the only qualifying condition upon implementation of the legislation.
- Dr. Voth also recommended that there be no other qualifying medical conditions unless and until other indications are approved by the FDA for treatment with medical marijuana. Dr. Voth suggested that a cannabis medical practice committee (with no representatives of the cannabis industry) could be established by KDHE to review additional indications for treatment with medical marijuana.
- Dr. Voth also recommended that patients be regularly monitored for complications or side effects and that the monitoring be supervised by the KDHE cannabis medical practice committee.

12. Prior treatment requirements.

- Dr. Voth recommended that there must be evidence of three prior failed treatment efforts for chronic pain before medical marijuana can be recommended.
- The Kansas Medical Society also recommended requiring the failure of other approved treatments prior to recommending treatment with medical marijuana.

13. 30-day supply amount. General discussion raised the issue of who should set the amount that constitutes a 30-day supply for a patient.

- Dykema Gossett noted there are no equivalency definitions for forms other than flower, and that defining any limits in statute could be problematic given the varying needs of patients.
- Dr. Adinoff noted that practicing physicians do not recommend specific dosage, strain, or route of cannabis administration as there are no standards of practice. He also noted that FDA recommendations for THC are limited in their use and should not be strictly followed.
- Dr. Voth recommended that the physician designate the specific dose of THC for the patient and that the dose be confirmed by a second consulting physician.
- NORML requested minimal restrictions on a physician's ability to treat with medical marijuana.
- The Silver-Haired Legislature noted that mobility is an issue for older patients and there is a benefit to having a 90-day supply.

- The law enforcement associations requested the legislation clearly limit the number of 30-day supply purchases a patient/caregiver can make in a specified time period.

14. THC content limitations.

- The law enforcement associations requested the legislation establish maximum potency levels of THC for plant material, extracts, and medical marijuana products.
- Dykema Gossett noted there are no equivalency levels for forms of cannabis other than flower.
- Dr. Adinoff noted there was no need to limit THC potency in cannabis products.
- Dr. Voth recommended that cannabis preparations should have no more than 10% THC by weight.
- The Kansas Medical Society recommended limiting the percentage of THC content in medical marijuana products.

15. Forms of THC.

- Dykema Gossett noted that the statutory definition of THC could mean only the Delta-9 form, which would potentially leave the Delta-8 form unregulated. Michigan has specifically included the Delta-8 form within its regulatory acts.
- Chris Brunin recommended not including Delta-8 in the proposed legislation as it should only be sold by hemp companies.

16. Forms of medical marijuana products. NORML requested that patients and caregivers been given access to the entire cannabis plant and not be limited in the methods of administration.

17. Smoking and vaporization prohibition.

- Dykema Gossett noted that the proposed definition of “vaporization” may be too narrow to cover all the various methods by which cannabis may be vaporized for consumption.
- Greenlight suggested that such a prohibition would make it difficult for the industry to recognize a profit.
- Dr. Adinoff noted that smoking/vaporization had significant medical benefits for patients although there are downsides.
- Shane Roeder and Jim Ricketts recommended that smoking forms be permitted.

18. Restrictions on use.

- The law enforcement associations requested the legislation restrict drug paraphernalia possession and usage to strictly for medical marijuana use.
- The DCCCA suggested consideration of restricting use of medical marijuana in public areas.
- The ACLU recommended language expressly allowing registered patients to continue using medical marijuana while on parole or probation without any negative impact.

19. Transportation of product.

- Dykema Gossett questioned whether a product such as a topical would need to be locked in a container when traveling.
- The Kansas Cannabis Coalition also noted that proposed legislation may be too stringent to allow a patient to use a product and then travel with the opened package.

20. Prohibition on homegrown product.

- The League of Kansas Municipalities (LKM) requested that homegrown products be prohibited.
- Dykema Gossett noted that such prohibition should be clear in the statutes.
- The Kansas Cannabis Coalition advocated for homegrown product being permitted for low-income and indigent patients.
- NORML supported the right of patients to grow their own cannabis.
- Chris Brunin supported allowing senior citizens and terminally ill patients with no dispensary within 10-20 miles to cultivate a small number of plants for a higher registration fee.

21. Caregiver/patient relationships.

- Kansans for Hemp recommended using a tiered licensure system to regulate the number of patients associated with each caregiver.
- Dykema Gossett noted that tracking transfers of product from caregiver to patient would be prudent.

Business Entity Regulation

22. Enforcement attorney. ABC requested that the agency be provided at least one additional assistant attorney general due to the increased volume of licensure regulation.
23. Fines and penalties. Dykema Gossett noted that the penalties for first offenses appeared low and that subsequent offenses would usually be subject to higher penalties.
24. Lawful orders of the Director. ABC requested the legislation impose penalties on licensees that fail to comply with a lawful order of the Director. (This would mirror current alcoholic liquor licensure enforcement.)
25. Regulatory funding. ABC requested the legislation provide the agency with a clear revenue fund from which the agency can pay its administrative costs without access to such fund by another agency.
26. Additional definitions. ABC requested that additional terms related to the regulation of business entities be defined in the legislation. These include:
 - Cannabinoid
 - Cultivate
 - Dispense
 - Edibles (ABC raised the issue of whether certain types of edibles should be prohibited, such as beverages and hot sauces.)
 - Employee
 - Medical marijuana waste
 - Plant and plant materials
 - Transport
27. Licensee fees.
 - ABC requested that the fees for all business licenses be established in the legislation.
 - Dykema Gossett suggested laboratory license fees be minimal as there are significant capital costs on startup for labs. The firm also suggested lower license fees for retail dispensaries as revenues are relatively lower due to federal income tax laws. The firm also suggested that license fees in general not be so high as to make the industry not economically viable or lead to high market prices.

- The Kansas Cannabis Coalition suggested a tiered licensing system so that the license fees are not exorbitantly high which could result in higher retail prices for the patient.
- The ACLU recommended using a tiered licensing system based on business size.
- Shane Roeder testified that the proposed license fees were too high.
- The KAAAC recommended lowering the license fees in communities that have been impacted by the criminalization of marijuana.

28. License restrictions.

- ABC indicated that if the number of licenses is capped, then the agency will need additional legal resources as it anticipates a higher volume of litigation as a result.
- Dykema Gossett noted that having uncapped licenses could lead to excess capacity in the market and rapid price deflation incentivizing producers into diversion.
- Michigan Cannabis Manufacturer’s Association (MCMA) recommended capping cultivator licenses with clear criteria guiding the regulatory agency in issuing licenses.
- Greenlight noted that limitations on the number of licenses worked in Missouri and Arkansas.
- Greenlight also suggested that allocating licenses geographically across the State would ensure access by all state residents.
- The DCCCA recommended regulations on outlet density to regulate the intensity of use among young adults.

29. Issuance of licenses.

- Dykema Gossett noted it is unclear whether licenses would be issued prior to construction and inspection of a facility.
- Dykema Gossett questioned whether vertical licensure would be permitted at a single location (e.g., cultivation, processing, and distribution at a single facility).
- Dykema Gossett also questioned whether multiple licenses could be issued to a single entity.
- Chris Brunin testified that priority should be given to Kansas businesses with experience producing and selling cannabinoids.

30. Ownership restrictions.

- Dykema Gossett noted that performing background checks on every owner is not common as there could be numerous owners even in a partnership or LLC ownership structure. Most states move to checking only owners that hold a certain percentage of ownership interest in the licensee.
- Dr. Adinoff suggested that individuals with cannabis-related felony convictions should not be excluded from participating in the industry.
- The ACLU also suggested allowing convicted felons the opportunity to obtain a license regardless of the felony offense or if the applicant's spouse was convicted of a felony.
- The law enforcement associations requested that making a fraudulent application for a license should result in mandatory suspension, revocation, and denial of a license along with potential criminal penalties.
- Dykema Gossett noted that restricting ownership to state residents could lead to litigation and delays in implementation as federal courts have found such restrictions to violate the dormant commerce clause of the U.S. Constitution.
- Dykema Gossett also noted that restrictions on ownership by publicly traded companies could impede investment in Kansas and operations by companies with the most experience.
- Dr. Randy Shephard recommended that in addition to employee training, there should be a requirement for ownership training for business licensees prior to issuance of the license and on-going annual training afterwards.

31. License effective dates. ABC requested that licenses be effective on the date specified on the license. (This would mirror current alcoholic liquor licensure practice.)

32. Ownership and license transfers. ABC requested that licenses not be transferable. Also, that the legislation establishes a fee for ownership changes.

33. Regulatory compliance requirement.

- Dykema Gossett questioned whether compliance with all regulatory requirements should be required for continued licensure, not just compliance with the medical marijuana regulatory act.

- The State Fire Marshal requested that the legislation require licensed premises comply with all applicable life and safety codes and direct the State Fire Marshal to adopt rules and regulations for such codes for all licensed premises.

34. General business operations.

- Dykema Gossett noted that generally the proposed legislation did not provide standards for business operations.
- Kansans for Hemp recommended protocols for evaluating operating procedures and providing licensees with environmental sustainability best practices.

35. Laboratory and testing restrictions.

- Clay Billard testified that the state testing laboratory should be established prior to issuing any licenses.
- Dykema Gossett noted that use of licensed laboratory facilities should prohibit lab-shopping.
- Kansans for Hemp recommended guidelines for laboratory testing fees to ensure all business licensees can access testing and also suggests subsidizing the cost.

36. Seed/plant origination.

- ABC noted the proposed legislation does not address how cultivators will obtain the seeds or plants.
- Todd Scattini encouraged developing relationships with neighboring states to allow interstate transfer of cannabis.

37. Licensure of cultivators.

- ABC requested that the legislation be clear as to how cultivators are to be licensed if the licensure is based on grow space (e.g., by square foot or by number of plants).
- ABC requested that the expansion of a cultivator's grow space be a separate process from the standard license renewal process as any expansion of the grow space necessarily changes the license.
- Dykema Gossett questioned whether multiple cultivator licenses could be issued for the same location (e.g., stacked). The firm also questioned whether outdoor cultivation would be permitted.
- MCMA recommended that outdoor cultivation be clearly prohibited.

- Kansans for Hemp recommended cultivator license restrictions based on flowering canopy size.

38. Packaging and labeling requirements.

- The Board of Pharmacy requested the legislature consider packaging and labeling requirements for consumer products. In particular, the Board noted: prohibiting packaging that is attractive to children; requiring child-resistant packaging; requiring all labels be solely in black and white; and allowing the marijuana leaf as the only symbol on product labels.
- ABC requested the legislation be clear as to packaging requirements when a cultivator sells product directly to a retail dispensary.
- Dr. Adinoff noted that there is an open-source universal symbol for cannabis products and advised its use.
- Dykema Gossett noted that including a QR code on each product that pulls up the lab Certificate of Analysis would be valuable.
- The DCCCA recommended that the legislation clearly define packaging and labeling requirements, including basic consumer information.
- Jim Ricketts testified that packaging should be child-proof.
- Chris Brunin opposed limiting labels to black and white.
- The law enforcement associations requested that, at a minimum, the labeling requirements for medical marijuana products comply with FDA regulations for over-the-counter medications, such as active ingredient, uses, warnings, inactive ingredients, purpose, directions, percentage of any cannabinoid included in the product (and for THC by delta type), and other required information.
- Dr. Voth also recommended the FDA labeling requirements as minimum requirements for medical marijuana products.
- The law enforcement associations also requested consideration of making labeling violations a consumer protection violation.

39. Advertising regulations.

- The Kansas Medical Society suggested that proposed legislation on advertising regulations was flawed.
- The DCCCA recommended the legislation establish advertising and packaging requirements to ensure products are not marketed to or appear appealing to

minors. The organization also suggested restrictions on promotions, sponsorships, and other merchandizing.

- The DCCCA recommended the legislation require the publication of information concerning the benefits and risks of cannabis use and how to access education, prevention, and treatment for addiction.
- Lamar requested that there be no requirement for KDHE to pre-approve advertisements.
- Lamar also requested that the prohibition on advertisements within 10 miles of the state border be removed because of the impact on advertising in the Kansas City metro area.

40. Retail sales.

- ABC requested the legislation clarify that transactions by business entities are to deliver *and* sell product rather than “deliver or sell.”
- Dykema Gossett noted that prohibitions on all forms of revenue sharing could be problematic as many popular products are licensed to the retail dispensary, which would potentially be prohibited as revenue sharing.
- Chris Brunin testified to allowing nonresidents with a patient card to purchase in Kansas.

41. Transfer of product.

- ABC requested the legislation clarify who can transport products and the ownership of such products during transportation. Also, ABC noted the possible creation of a transport license if third parties are used for transportation of products between business licensees.
- ABC also requested the legislation be clear as to whether the transfer of product between licensees that have common ownership without the necessity of a purchase will be allowed.

42. Retail dispensary employee training. April Hatch expressed the need for state-approved training programs for employees for retail dispensaries.

43. Record retention. ABC requested that licensees be required to retained records for at least 3 years except video recordings would only be retained for 90 days.

44. Security requirements. Dykema Gossett noted that back-up power supplies should be required as part of a facility security plan. The firm also questioned whether facility security personnel could be armed.
45. Pharmacist consultants.
- The Board of Pharmacy requested that it be authorized to charge a registration fee to cover the administrative costs of registering pharmacist consultants.
 - Dr. Adinoff suggested that to avoid drawing pharmacists from understaffed pharmacies the law should allow nurse specialists to serve as medical consultants for retail dispensaries.
 - Chris Brunin testified that clinical nurses could replace pharmacist consultants.
 - April Hatch expressed the need for experienced nurses being available to patients in addition to pharmacist consultants.
46. Income tax changes. Dykema Gossett noted that federal income tax law does not allow business expense deductions for these business licensees. The firm suggested amending state income tax law to allow for such deductions at least at the state level.
47. Financial institution protections. Dykema Gossett noted that financial institutions should be required to comply with the U.S. Treasury Dept’s Financial Crimes Enforcement Network (FinCEN) and that marijuana-related suspicious activity reports should be reported to the State as well as the federal regulators. The firm also suggested allowing financial institutions to access the seed-to-sale system.

Taxation Issues

48. Taxation of medical marijuana products. NORML requested that medical marijuana products not be taxed since prescription medications are not taxed.
49. Taxation for drug addiction prevention and education funding. The DCCCA recommended imposing a tax on medical marijuana products to fund additional resources for drug addiction prevention, education, and treatment.
50. Community grant fund. The ACLU recommended imposing a 5% excise tax on medical marijuana products to fund a grant program for community education and reinvestment.
51. Increased funding for the State Fire Marshal. The State Fire Marshal requested an adjustment in the distribution of insurance premium tax and fee revenue to provide

additional funding for the State Fire Marshal to hire additional personnel for the increased workload expected under the proposed legislation.

Law Enforcement Issues

52. Prohibit vegetative or botanical forms. The KBI and law enforcement associations suggested removing vegetative and botanical forms of marijuana from the list of approved forms of consumption to eliminate the risk of smoking and vaping and the risk of unauthorized THC extraction.
53. Prohibit unauthorized extraction of THC. The KBI and law enforcement associations requested the legislation criminalize extraction of THC by anyone not properly licensed to do so under the legislation.
54. Waste disposal procedures. The law enforcement associations noted that putting waste disposal procedures in the legislation would lessen the chance of unregulated marijuana entering the market.
55. Criminal penalties for distribution to a minor or unregistered patient. The KBI and the law enforcement associations suggested higher penalties for distribution of medical marijuana to minors or nonregistered individuals than a Class A misdemeanor. Alternatively, they suggested the legislation clearly state any distribution in violation of the Act is subject to the controlled substances criminal statutes.
56. Access to patient/caregiver registration information. The KBI and the law enforcement associations requested that law enforcement be provided with real time information on patient and caregiver registration with KDHE to assist in verifying an individual is a registered patient or caregiver.
57. Access to patient written recommendations. The KBI requested that KDHE provide law enforcement with real time information through KCJIS concerning a patient's recommended 30-day supply of medical marijuana to assist verifying the patient possesses the legal amount.
58. Presentation of documentation to law enforcement.
 - The law enforcement associations requested the legislation include the requirement that any license or registration documentation be presented to law enforcement on request. (This would be similar to requirements for driver's licenses.)

- Jim Ricketts testified that medical marijuana registration should be listed on the person's driver's license and vehicle license plate.
59. Reporting of violations to regulatory authorities. The law enforcement associations requested the legislation allow for reporting of regulatory violations by law enforcement to the appropriate regulatory agency. (This would be similar to current alcoholic liquor enforcement provisions.)
60. Cooperation with investigations. The law enforcement associations requested the legislation require licensees to cooperate with law enforcement investigations including access to the premises and applicable licenses.
61. Prohibit use in local jails. The law enforcement associations requested that the use of medical marijuana be prohibited in local jails.
62. Stricken provisions of K.S.A. 21-5706. The law enforcement associations are concerned about the statutory defense to criminal possession for CBD preparations allowed under K.S.A. 65-6235 that is stricken in the proposed legislation. These CBD preparations are otherwise unaffected by the provisions of the proposed legislation, but the proposed amendment would eliminate this defense to criminal liability.
63. Unlawful storage provisions. The law enforcement associations requested the legislation strengthen the crime of unlawful storage to also include preventing access by registered patients who are minors to avoid unsupervised self-medication by the minor. Also, they requested the language be modified to allow for charging a violator with endangering a child if the elements of that crime are met.
64. Additional law enforcement costs. The law enforcement associations requested the legislation provide a portion of the taxes/fees collected under the legislation to law enforcement to cover the additional costs incurred in enforcing the legislation.
65. Reevaluation of marijuana crime convictions. The KAAAC recommended reevaluating the sentences of those individuals convicted of marijuana-related crimes when the conduct would have been legal under the proposed legislation.

Local Government Issues

66. Municipality option.
- The LKM requested the legislation allow municipalities to opt-in and allow retail dispensaries within city limits.

- Greenlight noted that local government opt-out provisions were a good tool for local jurisdictions.

67. Zoning regulations.

- The LKM requested cities retain the authority to regulate medical marijuana businesses, including public health and safety regulations and zoning regulations. Specifically, the LKM requested the legislation require businesses to comply with local zoning regulations as a condition for licensure.
- The ACLU recommended including language to make it clear that zoning regulation compliance applies equally to cannabis-based businesses as to any other business.

68. Distribution of revenue to municipalities.

- The LKM requested that a portion of the funds collected through sales taxes or other fees, or taxes be distributed to municipalities to offset the municipalities' enforcement costs.
- The LKM also requested that a portion of license fees be distributed to municipalities to offset the cost of administration at the local level. Alternatively, authorize municipalities to create local licenses.
- Dykema Gossett noted that tax revenue sharing with local government and law enforcement can generate more support for the legislation from those stakeholders.

Other Legal Issues

69. Employee drug testing policies.

- Dykema Gossett noted that the employee/employer provisions may be inconsistent in what an employer is authorized to do with respect to drug policies.
- The ACLU recommended that the language be clear that employees cannot be discriminated against due to being a registered patient and legally using medical marijuana except as required by federal law.
- NORML also recommended that legislation not allow employers to discriminate against employees that legally use medical marijuana.
- The DCCCA recommended clear guidance to employers on nondiscriminatory drug testing policies and treatment and support for employees.

- The Kansas Chamber of Commerce requested that any legislation clearly allow employers to continue using employee drug testing policies, including zero tolerance policies.
- The Kansas Self-Insurers Association requested that the legislation clearly allow employers to continue using employee drug testing policies, including zero tolerance policies.

70. Workers' compensation benefits.

- The Kansas Self-Insurers Association requested that impaired employees not be permitted to claim workers' compensation benefits even if use of medical marijuana is legal.
- The Kansas Self-Insurers Association also requested that medical marijuana be specifically excluded as a permitted treatment for injuries covered by workers' compensation benefits.

71. Professional practice discipline. Dykema Gossett noted that physicians and other medical personnel can be disciplined for recommending medical marijuana for themselves or family members, and suggested that drug use restrictions for other professionals, such as lawyers and accountants, continue to apply.

72. Prevention of discriminatory practices.

- The KAAAC recommended including safeguards against discriminatory practices against those holding a medical marijuana card.
- The ACLU recommended language that makes it clear that agencies administering federal public housing programs cannot discriminate against potential or existing tenants for legally using medical marijuana except as required by federal law.