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TESTIMONY ON HOUSE BILL 477 HOUSE DRAFT 1  
RELATING TO CANNABIS

By  
Clifton Otto, MD

House Committee on Consumer Protection & Commerce  
Representative Aaron Ling Johanson, Chair  
Representative Lisa Kitagawa, Vice Chair

Tuesday, February 16, 2021; 2:00 PM  
State Capitol, Room 329 & Videoconference

Thank you for the opportunity to provide COMMENTS on this measure.

While I support measures that would improve patient access to reasonably priced safe cannabis medicine, I am opposed to changes to Hawaii's Medical Cannabis Program that will serve to expand criminal activity across the state, which is exactly what this bill will do if it does not address the current conflict with the federal regulation of marijuana at the same time, especially with the involvement of interisland transport.

Therefore, I respectfully recommend the following amendment be inserted at Page 17, Line 6 of this draft to recognize that the state authorized use of cannabis in Hawaii is exempt from the federal regulation of marijuana:

"chapter with the understanding that Part IX of chapter 329, Hawaii Revised Statutes, and chapter 329D, Hawaii Revised Statutes, create an exemption from federal drug laws and do not create any positive conflict pursuant to title 21 United States Code Annotated section 903; and that the federal scheduling of marijuana does not apply to the state authorized use of cannabis [state law and its protections do not apply outside of the jurisdictional limits of the State]."

Secondly, the changes that would be created by this measure will require chapter 91 administrative procedures to be in effect so that stakeholders can provide public input on administrative rules that will implement these changes. The Department of Health (DOH) has had over five years to adopt final dispensary rules and has done little with its authority under interim rules, so the reasoning that interim rules are necessary to respond quickly to a changing regulatory landscape just does not hold up.

Therefore, the following statutory amendment needs to be made to ensure that final dispensary rules are adopted in a timely fashion:

"§329D-27 Administrative rules. (a) The department shall adopt rules pursuant to chapter 91 to effectuate the purposes of this chapter.

(b) No later than January 4, 2016, the department shall adopt interim rules, which shall be exempt from chapter 91 and chapter 201M, to effectuate the purposes of this chapter; provided that the interim rules shall remain in effect until September 1, 2021 [~~July 1, 2025~~], or until rules are adopted pursuant to subsection (a), whichever occurs sooner.

(c) The department may amend the interim rules, and the amendments shall be exempt from chapters 91 and 201M, to effectuate the purposes of this chapter; provided that any amended interim rules shall remain in effect until September 1, 2021 [~~July 1, 2025~~], or until rules are adopted pursuant to subsection (a), whichever occurs sooner."

And finally, the Health Resources Administration (HRA) has proven over the past two years that it is incapable of providing proper regulatory oversight for the dispensary program. This has been demonstrated by HRA's willingness to allow dispensaries to convert moldy cannabis flowers into "remediated" manufactured products that were sold to patients without their knowledge and without any statutory authority or administrative rules, its refusal to adopt testing standards for isopropyl alcohol and ethanol despite evidence that these harmful contaminants were introduced into products during the unregulated "remediation" process and sold to patients, and its refusal to create a medical cannabis advisory board or similar means of obtaining scientific and medical advice from local experts to assist with dispensary regulation.

Therefore, the following statutory amendment needs to be adopted to transfer regulatory oversight of the patient registry and dispensary programs to a division within DOH that already has the necessary regulatory experience and capabilities:

"§329D-2.5 Office of medical cannabis control and regulation;

established; duties.

(a) There is established within the department the office of medical cannabis control and regulation, which shall report to the deputy director of environmental health administration effective September 1, 2021 [~~health resources administration~~].

(b) The office of medical cannabis control and regulation shall administer medical cannabis dispensary licensure and regulation, pursuant to this chapter, and the registration of qualifying patients and primary caregivers, pursuant to part IX of chapter 329."

Thank you for considering these important changes.

Aloha.