Ohio | Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

MEMORANDUM

TO: Sydney King, Director of Stakeholder Relations, Medical Marijuana Control Program Ohio Department of Commerce

FROM: Paula Steele, Common Sense Initiative Office

DATE: April 24, 2019

RE: CSI Review – Medical Marijuana Control Program (OAC 3796:2-1-06; 3796:2-2-03; 3796:3-2-03; 3796:4-2-06; 3796:5-2-01; 3796:5-6-01; and 3796:5-6-04)

On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

This rule package contains one new and six amended rules being proposed by the Ohio Department of Commerce Medical Marijuana Control Program (MMCP). The rule package was submitted to the CSI Office on March 8, 2019, and comments were accepted through March 22, 2018. Four parties commented during the CSI review period.

The draft rules pertain to medical marijuana cultivators, waste disposal, employee identification cards, enforcement, and include a new rule providing the director the ability to grant variances under certain circumstances.

The MMCP was recently created with the passage of House Bill 523. The first sale of medical marijuana occurred on January 16, 2019. New rules had to be developed prior to implementing the program, and as it has become operational, stakeholders and the MMCP have identified areas in which the rules are either unnecessarily burdensome, costly, unclear or inflexible. According to the BIA, the intent of the new and amended rules is to alleviate those specific burdens and issues.

Of the four commenters, one did not address substance of the proposed rules and one was in support of all the proposed changes stating, "rule proposals will remove operational barriers to licensed medical marijuana businesses, and allow them to focus on providing safe products to patients. At the same time, this rules package preserves the Ohio Department of Commerce's ability to adequately regulate the industry and ensure the high safety standards of the Ohio Medical Marijuana Control Program are adhered to." The other two commenters were primarily in favor of the changes except for a few proposed amendments within three rules, OAC 3796:2-1-06, 3796:5-2-01 and 3796:5-6-01.

OAC 3796-2-1-06 - *Cultivator certificate of operation*, prescribes the requirements for a cultivator to obtain a medical marijuana certificate of operation. According to the BIA, the rule is being amended to clarify that cultivator licensees are not eligible for agriculture exemptions from the Ohio building code. Cultivation facilities are sophisticated operations with specific requirements that make them subject to the building code to ensure the safety of employees and the surrounding community. The second rule, OAC 3796:5-2-01, outlines the requirements for medical marijuana facility employee identification cards. While the proposed amendments remove requirements deemed unnecessary, the rule maintains the provision which permits the department to request additional information in the application. According to the MMCP, the department needs flexibility to require appropriate documentation from potential employees. Finally, in OAC 3796:5-6-01 - *Scope of Enforcement and Enforcement Powers*, the proposed rule removes a provision regarding the information collected by the department. A stakeholder was concerned over the potential for improper disclosures. The MMCP explained that it struck the language because existing public records and protection of trade secrets laws made the provision unnecessary and potentially problematic with current statute.

The MMCP acknowledges the adverse impacts of the regulations include the time required to destroy waste materials according to strict procedures and compliance with building and fire codes. According to the BIA however, the impacts of the proposed changes are either neutral or benefit the regulated business community and are necessary to avoid negative outcomes for Ohio's medical marijuana program's businesses and patients.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that the Board should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.