January 6, 2017

Massachusetts Public Health Council

Commissioner Dr. Monica Bharel, Chair

Department of Public Health

250 Washington Street, 2nd Floor

Boston, MA 02108

RE: Proposed changes to 105 CMR 725.000

Dear Members of the Public Health Council:

Thank you for the opportunity to comment on proposed changes to the medical marijuana regulations (105 CMR 725.000). Patriot Care is pleased that Department of Public Health is making a concerted effort to update the regulations based on the experience and knowledge gained since marijuana for medical use was made legal in 2012.

The regulatory changes, as proposed, make important changes to increase patient access and add clarity to the application and oversight process. Patriot Care is supportive in particular of the inclusion of nurse practitioners as certifying health care providers (105 CMR 725.006) and of the creation of “caregiving institutions” (105 CMR 725.021 and 105 CMR 725.022) We think these changes will allow more qualifying patients to get the treatment that they need.

We are concerned by some of the proposed changes before the Public Health Council which we believe exposes patients and RMDs to increased risk to health and safety. Please note these concerns below:

* 105 CMR 725.100 (B) (1) – Elimination of prohibition of those with drug felony conviction from participation in RMDs as a board member, executive, employee or volunteer.
  + *Concern:* Allowing the participation of convicted drug felons in the medical marijuana industry undermines the Department’s interest to have a well-regulated, safe, and compliant program. Permitting those who have demonstrated the interest and willingness to ignore state and federal drug laws sends the wrong signals to those who would participate in the legal, regulated industry. This is a controlled substance with significant criminal value. Communities in Massachusetts should not have to entrust their safety to the very population that has been found to engage in activities that intentionally undermine civil society.
  + *Proposed change:* Restore 105 CMR 725.100 (B)(1) (c ,d, and e)
* 105 CMR 725.110 (1)(e) – change from requirement to have 24 hour recordings in all areas where marijuana may be stored and processed, allowing use of motion-activated cameras.
  + *Concern:* Common motion detection video security system programs have settings which are too easily turned off and on, often with the check of a single box in the settings file. Without the continuity of video recordings it will be impossible to differentiate between a camera not recording because there is no motion in the room from one not recording because of a settings change.
  + *Proposed change:* Eliminate inclusion of “or the equivalent from motion-activated camera” from 105 CMR 725.110 (1) (e).
* 105 CMR 725.105 (N)(2) – allowing new RMD to cultivate from cuttings or genetic material from plants during the first 90 days of operation
  + *Concern:* The Department’s seed-to-sale tracking regime ensures that the entire life cycle of a marijuana plant to be used for medicine is monitored for safety purposes. Monitoring the full life cycle allows you to be sure that there are no soil contaminants, improper pesticide or chemical use, etc. Growing from cuttings and/or plants as large as 8 inches by 8 inches, creates a gap of 2-4 weeks of plant growth with no documented provenance or monitoring to ensure that the plants were not raised or treated with materials outside of DPH guidelines. The short term convenience for new entries into the RMD market does not outweigh the risks to the safety and integrity of marijuana cultivated for patient use. The proposed regulations invite diversion and breach of Federal and State law..
  + *Proposed Change:* Eliminate new language at 105 CMR 725.105 (N)(2) allowing for cultivation from cuttings or genetic materials during the first 90 days of operation.
* 105 CMR 725.032 (H) – restriction of laboratory agents to testing marijuana and marijuana products to RMDs only
  + *Concern:* Marijuana for medical use cultivated at home in compliance with DPH regulation, as well as marijuana from certified patients, researchers and local hospitals are currently being tested by laboratories in the Commonwealth. We don’t think that laboratory agents should be prohibited from testing marijuana from these sources, rather we believe all growers should be required to test their products from these sources and demonstrate proof upon request that such testing has taken place and quality measures have been satisfied.
  + *Proposed change:* Strike 105 CMR 725.032 (H) or clarify language to permit testing from DPH compliant home cultivation and qualifying patient sources.
* 105 CMR 725.105 (N)(6) – restriction of RMD delivery to patient’s primary residence
  + *Concern:* Due to limited delivery hours and schedules (i.e. normal business hours, weekdays), some patients may not be able to be at home for marijuana delivery.
  + *Proposed change:* adapt language to permit patient to designate a delivery location other than his or her primary residence.

Patriot Care would also like to see included in the proposed regulatory changes language clarifying that personal caregivers may only deliver marijuana or marijuana products to their single designated patient. We would furthermore like to the addition of regulatory language mandating that the Department enforce 105 CMR 725.020 (D) by revoking caregiver registration card and notifying the state Attorney General’s office of the violation and revocation.

We also hope that the Department works to streamline, through regulations or sub-regulatory authority, the qualifying patient application process. We have heard repeatedly from patients and physicians that the process is burdensome and drive patients to the black market who would otherwise benefit from safe, tested, high quality marijuana for medical use.

I thank you sincerely for your attention and consideration to these concerns. It is my hope that these comment will aid the Department in promulgating final regulations that promote quality care and ensure access to medical marijuana for patients who need it across the Commonwealth.

Sincerely,

Robert Mayerson

Chief Executive Officer

Patriot Care Corp.