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OFFICE OF CANNABIS POLICY

JOHN HUDAK
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May 5, 2025

Re: LD 104, An Act to Protect the Health of Medical Cannabis Patients and Streamline the Mandatory Testing of Cannabis

Senator Hickman, Representative Supica, Members of the Joint Standing Committee on Veterans and Legal Affairs:

I am John Hudak, Director of the Office of Cannabis Policy and I am before you today in strong support of LD 104, our department bill to implement mandatory testing and tracking in Maine's medical cannabis program and to streamline the mandatory testing requirements in the Adult Use Cannabis Program. Our proposal reflects six years of observation, data collection, stakeholder engagement, and research into the unique public health and public safety challenges presented by Maine's medical cannabis program. This bill represents the most efficient and effective solution to addressing the twin challenges facing Maine's medical cannabis patients: contaminated medicine and illicit cannabis inventory in the medical cannabis market. However, we are also very supportive of the proposal brought forward by Representative Graham and our partners in public health and we are happy to collaborate with any stakeholders and legislators who are focused on patient-centered policies that ensure access to medical cannabis that is free from harmful levels of contaminants. Regardless of the vehicle, we strongly urge this committee to bring Maine's medical cannabis program into alignment with every other medical cannabis program in the country to require mandatory testing and to act now to curb the proliferation of illicit cannabis in the state's medical cannabis market.

To begin, it is important to acknowledge that Mainers have a long history with cannabis that extends much further back than the 2009 citizens' initiative to formalize the cultivation and distribution network created to implement the 1999 citizens' initiated medical cannabis program. It is equally important to acknowledge that cannabis has changed dramatically over the past 25 years, as has patients' access to cannabis and cannabis products. Maine's medical cannabis program was once a small network of caregivers cultivating cannabis and manufacturing cannabis products for up to five patients at one time (eventually bolstered by eight registered dispensaries located in each of the State's public health districts). That is no longer true. The program has expanded, with minimal regulatory intervention, into a modern commercialized cannabis industry where the state's 1,639 registered caregivers and 78 registered dispensaries provide more than 110,000 patients with medical cannabis and cannabis products.

The two 2018 laws that paved the way for the commercialization of Maine's medical cannabis program included a number of provisions that reflected the public health and safety guardrails necessary to support the commercial evolution of that market.[1] Those laws included provisions

[1] *See* P.L. 2017, ch. 447 and P.L. 2017, ch. 452.

authorizing registered caregivers to care for any number of patients, hire staff to assist them in their authorized activities, operate a caregiver retail store, engage in wholesale activities, and manufacture products using inherently hazardous substances. There were also provisions requiring medical cannabis to be tracked and tested in accordance with rules adopted by the Department. PL 2017, ch. 447, an emergency initiative that focused on the manufacture of cannabis products, included the following emergency preamble explaining the emergent circumstances requiring its enactment:

> **Whereas,** acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and
> **Whereas,** the medical marijuana industry has developed a variety of products containing marijuana to serve the needs of qualifying patients; and
> **Whereas,** the process of manufacturing those products may involve substances that are hazardous to use or that are hazardous to health; and
> **Whereas,** ***increased oversight over the manufacturing and testing of medical marijuana products is needed to ensure safety during the process of manufacturing and the safety of medical marijuana products intended for human consumption***; and
> **Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as ***immediately necessary for the preservation of the public peace, health and safety***; [emphasis added]

While the urgency of the 128th Legislature's charge of "increased oversight...needed to ensure safety" seemed lost upon the previous administration, the Mills Administration worked swiftly to create the Office of Cannabis Policy (OCP) in February 2019 to implement the policies enacted by the 128th Legislature. Within its first year, OCP was working with medical registrants and prospective adult use licensees to ensure that all program participants were trained by the State's inventory tracking system vendor before that inventory tracking system was scheduled to be rolled out in early 2020.[2] Despite numerous challenges, OCP continued to draft and propose rules for the medical cannabis program that implemented the will of the 128th Legislature, including implementation of mandatory testing and tracking. In fact, in order to ensure ample public participation during the pandemic, OCP published and took comments on an informal draft rule before engaging in formal rulemaking to ensure the rule adequately accounted for the legacy registered caregivers who still directly served a small number of qualifying patients. When those rules were rejected by the Legislature, OCP went back to the drawing board, engaging in additional discussions with stakeholders and lawmakers, and proposing new rules and legislation to address an ever-expanding list of concerns unrelated to fundamental issues of transparency and patient safety.

However, in 2021, the medical cannabis industry and the Legislature rolled back existing statutory provisions regarding testing and tracking and increased its own oversight of medical cannabis rulemaking, signaling to the Office a strong desire for the details of medical cannabis

[2] Recall that OCP's initial RFP in 2019 for inventory tracking for the medical and adult use cannabis programs resulted in an award of that contract to BioTrackTHC. That contract was terminated in late 2019, after BioTrack had provided training to industry users, when the State and BioTrackTHC determined the vendor could not deliver on the terms of the contract. Additional information on the contract termination is available at: https://www.maine.gov/dafs/ocp/news-events/news/ocp-finalizing-new-track-and-trace-contract-metrc-maines-medical-and-adult-use

policy to be addressed through statute rather than regulation. To that end, OCP worked with lawmakers during the 130th Legislature to introduce a bill to specify and clarify in statute the requirements applicable to the mandatory testing of medical cannabis.[3] That bill was ultimately defeated, and OCP subsequently convened several formal and informal working groups of medical cannabis stakeholders to attempt to identify a path forward to bring common sense health and safety regulations to the medical program.

The reality is that those efforts uncovered a complete lack of consensus among stakeholders on the issues of testing, tracking, and overall regulation that persist to this day. We understand the challenges presented by trying to right size the health and safety requirements of the medical cannabis program to meet the current medical cannabis industry where it is at, but the time to wrestle with those challenges and enact solutions that protect patients has come.

It is time to stop debating whether or not there is a need for mandatory contaminant testing in Maine's medical cannabis program; there is. A 2023 audit of 120 samples of medical cannabis taken from 112 caregivers and eight dispensaries found that 50 of those samples (42%) contained at least one contaminant that would have failed mandatory testing in the state's adult use program.[4] Regarding potency, OCP has since its inception received complaints from medical cannabis patients who received edible cannabis products with THC potency values that were significantly different than the potency values listed on the product label, leading to adverse reactions.[5]

It is time to stop debating whether or not there is a need to track medical cannabis in the same way that adult use cannabis is tracked; there is. Not a month has gone by in the last year and a half without new reports of illicit multistate operators cultivating cannabis in residences and warehouses across the state. OCP has received reports and complaints from medical cannabis stores that those illicit growers have attempted to sell pesticide and microbial contaminated batches of cannabis to registered caregivers at rock bottom prices. OCP has also fielded complaints that some stores are purchasing those products. While those reports come from reputable operators who assure OCP that they would never accept illicit cannabis, absent inventory tracking (and mandatory testing), there is no way for regulators to know the origin of medical cannabis offered for sale to qualifying patients. Now with illicit operators attempting to obtain credentials to operate in the medical cannabis program, introducing reasonable

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[3] *See* LD 1445, Sponsored by Representative Patricia Hymanson of York, printed April 12, 2021, available at: https://legislature.maine.gov/billtracker/#Paper/HP1061?legislature=130 (accessed April 27, 2025).

[4] Office of Cannabis Policy, *Harmful Contaminants in Maine's Medical Cannabis Program*, Fall 2023, available at: https://www.maine.gov/dafs/ocp/sites/maine.gov.dafs.ocp/files/inline-files/OCP%20Fall%202023%20Medical%20Testing%20Report.pdf (accessed April 27, 2025).

[5] *See* "Guidance for Verifying the Potency Information on Medical Cannabis & Medical Cannabis Product Labels" stating "One complaint involved an edible cannabis product that contained more than 12 times the amount of THC per serving than was listed on the label. OCP has also investigated other cases in which the real THC amount in a product was far lower than the product label. Additionally, in at least one of these cases, individual samples taken from the same container of edible cannabis products had THC potency values ranging from 12 mg to 52 mg per serving." Available at: https://www.maine.gov/dafs/ocp/sites/maine.gov.dafs.ocp/files/inline-files/Guidance%20Verifying%20Potency%20Information%20on%20Medical%20Cannabis%20%26%20Cannabis%20Product%20Labels.pdf (accessed April 27, 2025).

[6] At present, the actual cost of inventory tracking is $40/month per licensee + 45 ₡ per plant and 25 ₡ per bulk package and the actual cost of testing is an average of $534/ batch (up to 22 pounds) for cannabis flower testing and $322 (for batches of up to 10,000 retail sale units) for cannabis product testing for adult use licensees.

transparency standards into the program is the most simple and effective way to close the revolving door of illicit operators seeking a veil of legality from the medical cannabis program.

It is time to put the safety and informed consent of Maine patients first when it comes to regulating medical cannabis. Medical cannabis patients in our state deserve access to medicine that has been tested for harmful contaminants like *E. coli*, *Salmonella*, arsenic, mercury, and prohibited pesticides. Maine patients deserve the peace of mind that comes from knowing their medical cannabis is, in fact, medical cannabis that was cultivated and manufactured here in Maine by caregivers and dispensaries passionate about providing high quality, effective medicine to their patients.

It is time to reject the narrative that it is simply too costly to provide pediatric, immunocompromised, and critically ill patients with medical cannabis that is tested and tracked.[6] The economics of that narrative have been tested time and again by the adult use cannabis market, and the simple truth is mandatory testing and tracking do not have any appreciable impacts on the average price of a gram of cannabis. OCP rolled out mandatory testing in the adult use program in three phases over the first few years of the program, first requiring mandatory testing for microbials, yeast and mold, water activity, filth and foreign materials, and heavy metals, later adding residual solvents and then pesticides once sufficient capacity to test for those analytes existed within Maine's licensed and certified testing facilities.[7] Despite the addition of tests for residual solvents and pesticides, the price-per-gram paid by adult use consumers has dropped while annual sales revenues have continued to climb.[8] Furthermore, it is important to note that this bill takes the lessons learned from Maine's Adult Use Cannabis Program and seeks to streamline mandatory testing requirements for adult use cannabis while also implementing those streamlined requirements for medical cannabis.

In closing I will remind you that last year the Legislature established the following duties for the Director of the Office of Cannabis Policy:

> A. Promote the health and well-being of the people of the State and advance policies that protect public health and safety, emphasizing the health and well-being of minors, as priority considerations in performing all duties, including those listed in this subsection;
> B. Ensure that the administration of the laws of and the rules adopted pursuant to this Act and the Maine Medical Use of Cannabis Act is consistent, predictable and equitable;

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[6] At present, the actual cost of inventory tracking is $40/month per licensee + 45 ₡ per plant and 25 ₡ per bulk package and the actual cost of testing is an average of $534/ batch (up to 22 pounds) for cannabis flower testing and $322 (for batches of up to 10,000 retail sale units) for cannabis product testing for adult use licensees.

[7] Testing for residual solvents went into effect on October 1, 2021, and testing for pesticides went into effect June 12, 2023. *See e.g.* https://www.maine.gov/dafs/ocp/sites/maine.gov.dafs.ocp/files/inline-files/OMP_Memorandum-Residual_Solvent_Mandatory_Testing_Reminder.pdf and https://www.maine.gov/dafs/ocp/sites/maine.gov.dafs.ocp/files/inline-files/Advance%20Notice%20of%206.12.23%20Pesticides%20Testing%20Requirements.pdf (accessed April 27, 2025).

[8] The average price-per-gram of cannabis flower was $15.83 in 2020 when adult use sales were launched, and in 2024 the average price-per-gram was $7.24. Current and historical price data for the adult use program derived from the state's inventory tracking system is available at: https://www.maine.gov/dafs/ocp/open-data/adult-use/retail-sales (accessed April 27, 2025).

C. Ensure that qualifying patients maintain access to high-quality, effective and affordable cannabis for medical use under the Maine Medical Use of Cannabis Act; and
D. Develop good faith partnerships between the office and licensees.[9]

I am before you today to ask you to allow me and my staff to fulfill our duties by advancing the policies included in LD 104 to protect public health and safety; ensure the consistent, predictable and equitable administration of Maine's cannabis laws; and provide qualifying patients with access to high quality, effective and affordable cannabis for medical use. Let science, data, and facts be your guide in considering this bill, and consider the needs of the vulnerable medical patients who rely on cannabis as medicine. As always, we thank the committee for its consideration, and I am available to answer any questions you may have.

[9] 28-B MRS § 104-B.