




**Town of Arlington
Legal Department**

Douglas W. Heim
Town Counsel

50 Pleasant Street
Arlington, MA 02476
Phone: 781.316.3150
Fax: 781.316.3159
E-mail: dheim@town.arlington.ma.us
Website: www.arlingtonma.gov

To: Board of Selectmen

Cc: Adam Chapdelaine, Town Manager
Christine Bongiorno, Director of Health & Human Services
Fred Ryan, Police Chief
Michael Byrne, Building Inspector

From: Douglas W. Heim, Town Counsel 

Date: February 18, 2016

Re: Request for Approval of Letter of Non-Opposition by Massachusetts Patient Foundation

Members of the Board, it is my understanding that the Massachusetts Patient Foundation, Inc., a registered non-profit incorporated in Massachusetts requests a letter of support or alternatively, a letter of non-opposition, from the Board of Selectmen with respect to their intention to site and operate a Registered Marijuana Dispensary ("RMD") within the Town of Arlington. Accordingly, while the Board will recall that representatives of the Patient Foundation ("MPF") presented the Board with materials supporting their proposal at the October 19, 2015 Board meeting, and the legal parameters of RMD's were discussed, I write to provide you further information to aide your examination of MPH's request.

Legal Background

As the Board may recall, by November 2012 state-wide ballot question, the voters of the Commonwealth approved medical marijuana possession and use by certain qualified patients. The ensuing law, Chapter 369 of the Acts of 2012, and Department of Public Health ("DPH") regulations, 105 CMR 725, allow individuals with written appropriate medical authorization to obtain, possess, and use up to a 60-day supply of marijuana. Absent specific conditions such as

“hardship” as defined by DPH regulations, the State contemplates that up to 35 dispensaries (between 1 and 5 in each county of the Commonwealth) will be licensed to sell medical marijuana to these registered medical users. DPH developed a robust licensing process for RMDs, in which obtaining a letter of non-opposition or support from local executive bodies is a pre-requisite to eligibility. Accordingly, the Board’s support or non-opposition to MPH’s request is a necessary, but not sufficient step for MPH to open an RMD at their proposed location.

Local Laws, DPH Regulations & Siting Matters

In sum, the key points to bear in mind in terms of Arlington’s local authority over RMDs and marijuana use are the following:

- Arlington may not institute a blanket prohibition on either the use of medical marijuana, or on the siting and operation of any RMDs. It may exercise some control over the location of RMDs, which it has done by limiting RMDs to special permits in B3 and B5 zoned areas. To the extent Arlington does not have an a dispensary, it could provide some grounds for home cultivation.
- One means of qualifying for “hardship cultivation” under 105 CMR 725.035(3) is the “[l]ack of an RMD within a reasonable distance of the patient's residence and lack of an RMD that will deliver marijuana to the patient's or personal caregiver's primary address.”

At this juncture, the nearest retail RMD in operation is in Brookline, with additional operating retail RMDs in Ayer, Brockton, Lowell, Northhampton and Salem. To my knowledge, Boston has at least one proposed RMD presently working with DPH on its license.

As such, it is possible that some registered patient Arlington residents could currently claim hardship cultivation depending on their circumstances, though that likelihood would decrease if immediately neighboring communities sited an RMD.

- Neither Chapter 369 of the Acts of 2012 or DPH regulations permit the public use of marijuana, which constitutes a violation of Title VIII, Article 7 of the Town Bylaws and is punishable by a \$300 fine.
- The Board of Health has the authority, but is not mandated, to issue reasonable regulations with respect to RMDs consistent with state law. It is my understanding that the Board of Health has drafted regulations and the Director of Health and Human Services will be available to discuss such regulations with you.
- Absent local regulations altering the “buffer zone” with respect to siting, DPH requires RMDs not be “sited within a radius of five hundred feet of a school, daycare center, or any facility in which children commonly congregate. The 500 foot distance under this

section is measured in a straight line from the nearest point of the facility in question to the nearest point of the proposed RMD.” 105 CMR 725.110(A)(14).

To date, DPH has interpreted this requirement to include facilities dedicated to the use of children such as dance schools or gymnastics schools, but not other locations where children may frequently congregate but not in structured, heavily scheduled fashion.

For further information, please see the August 2015 “Guidance for Municipalities Regarding the Medical Use of Marijuana” from DPH attached hereto as reference material. It is my understanding that at present there are no schools, daycares or other qualifying facilities operating within 500 feet of the proposed site.

MPH-Arlington and Community Benefit Agreement

As the Board will recall, for the purposes of considering MPH’s request, the Town negotiated a draft contingent Community Benefit Agreement with MPH, outlining certain payments to the Town in the event the Board approves a letter of non-opposition or support for an RMD. These payments are intended to assist the Town in addressing public health, safety, or other concerns which may arise due to the operation of an RMD. Accordingly, such payments are only made upon the RMD obtaining all the necessary certificates, licenses and permits from DPH and other appropriate entities necessary for MPH to operate.

While there are still many uncertainties in the law with respect to the relationship and conflicts between federal and state laws on medical marijuana, the agreement would first and foremost be subject to interpretation under Massachusetts law. As such, the validity and enforceability of any Community Benefit Agreement presents low risk to the Town.

Substantively, the Benefit Agreement is structured very similarly to agreements in other communities where RMDs have opened, and contains competitive terms with respect to the payments to be made to the Town.

Future Regulation and Recreational Marijuana Initiatives

At present, a single ballot initiative with respect to legalizing recreational marijuana in the Commonwealth is to be inserted for voters’ consideration on the 2016 state-wide ballot. “The Initiative Petition for a Law Relative to the Regulation and Taxation of Marijuana,” proposes to regulate marijuana on terms similar to the regulation of alcohol in Massachusetts, including establishing a “Cannabis Control Commission” very similar to the Alcoholic Beverage Control Commission (“ABCC”), includes a proposed state tax rate and local tax option, which would not apply to medical marijuana sales. The proposal, if successful, would similarly permit local regulation of marijuana sales consistent with state law. It would also give modest preference in licensing to RMDs by allowing them to apply for licensure before prospective purveyors without an existing license to sell medical marijuana to registered patients.

REFERENCE MATERIALS

Town Bylaws Title VIII Article 7: **Public Consumption of Marihuana or Tetrahydrocannabinol**

(ART. 16, ATM – 05/04/09)

Section 1.No Public Consumption.

No person shall smoke, ingest, or otherwise use or consume marihuana or tetrahydrocannabinol (as defined in General Laws Chapter 94C, Section 1, as amended) while in or upon any street, sidewalk, public way, footway, passageway, stairs, bridge, park, playground, beach, recreation area, boat landing, public building, schoolhouse, school grounds, cemetery, parking lot, or any area owned by or under control of the Town, or in or upon any bus or other passenger conveyance operated by a common carrier within the Town, or in any place accessible to the public within the Town.

Section 2.Violation and Penalties. (Amended ART 18, ATM 2010)

Violation of Section 1 is punishable by a fine of \$300, enforceable through criminal indictment or complaint under General Laws Chapter 40, Section 21 or by non-criminal disposition under Gen Laws Chapter 40, Section 41D. Any penalty imposed under this Bylaw shall be in addition to any civil penalty imposed under G.L. c. 94C, § 32L.

Key Provisions of DPH Regulations 105 CMR 725

725.035: Hardship Cultivation Registration

(A) A qualifying patient registered with the Department pursuant 105 CMR 725.015 may apply for a hardship cultivation registration if such patient can demonstrate that his or her access to an RMD is limited by:

- (1) Verified financial hardship; or
- (2) Physical incapacity to access reasonable transportation, as demonstrated by an inability to use public transportation or drive oneself, lack of a personal caregiver with a reliable source of transportation, and lack of an RMD that will deliver marijuana to the patient's or personal caregiver's primary address; or
- (3) Lack of an RMD within a reasonable distance of the patient's residence and lack of an RMD that will deliver marijuana to the patient's or personal caregiver's primary address.

725.100: Registration of Registered Marijuana Dispensaries

(A) General Requirements.

- (1) An RMD is required to incorporate pursuant to M.G.L. c. 180 and to maintain the corporation in good standing with the Secretary of the Commonwealth. An RMD must operate on a non-profit basis for the benefit of registered qualifying patients. Such corporation must ensure that revenue of the RMD is used solely in furtherance of its non-profit purpose.
- (2) No executive, member, or any entity owned or controlled by such executive or member, may directly or indirectly control more than three RMDs.
- (3) An RMD must make vaporizers available for sale to registered qualifying patients.
- (4) An RMD may not have more than two locations in Massachusetts at which marijuana is cultivated, MIPs are prepared, and marijuana is dispensed. Each of these activities may occur at only one such location, which may be either the RMD's principal place of business or one Department-approved alternate location in Massachusetts, but not both.
- (5) All dispensary agents of the RMD must be registered pursuant to 105 CMR 725.030.

(6) An RMD must have a program to provide reduced cost or free marijuana to patients with documented verified financial hardship.

(7) At least one executive of a non-profit corporation seeking registration as an RMD must register with the Massachusetts Department of Criminal Justice Information Services (DCJIS) on behalf of the entity as an organization user of iCORI.

725.110: Security Requirements for Registered Marijuana Dispensaries

(A) General Requirements. An RMD shall implement sufficient security measures to deter and prevent unauthorized entrance into areas containing marijuana and theft of marijuana at the RMD. Security measures to protect the premises, registered qualifying patients, personal caregivers, and dispensary agents of the RMD must include but are not limited to the following. The RMD must:

- (1) Allow only registered qualifying patients, personal caregivers, dispensary agents, persons authorized by 105 CMR 725.105(P), and, subject to the requirements of 105 CMR 725.110(C)(4), outside vendors, contractors, and visitors, access to the RMD;
- (2) Prevent individuals from remaining on the premises of the RMD if they are not engaging in activity expressly or by necessary implication permitted by St. 2012, c. 369 and 105 CMR 725.000;
- (3) Dispose of marijuana in accordance with 105 CMR 725.105(J), in excess of the quantity required for normal, efficient operation as established in 105 CMR 725.105(G)(1);
- (4) Establish limited access areas accessible only to specifically authorized personnel, which shall include only the minimum number of employees essential for efficient operation;
- (5) Store all finished marijuana in a secure, locked safe or vault and in such a manner as to prevent diversion, theft, and loss;
- (6) Keep all safes, vaults, and any other equipment or areas used for the production, cultivation, harvesting, processing, or storage of marijuana and MIPs securely locked and protected from entry, except for the actual time required to remove or replace marijuana;
- (7) Keep all locks and security equipment in good working order;
- (8) Prohibit keys, if applicable, from being left in the locks, or stored or placed in a location accessible to persons other than specifically

authorized personnel; 5/24/13 105 CMR - 4160.11 105 CMR:
DEPARTMENT OF PUBLIC HEALTH 725.110: continued

(9) Prohibit accessibility of security measures, such as combination numbers, passwords, or electronic or biometric security systems, to persons other than specifically authorized personnel;

(10) Ensure that the outside perimeter of the RMD is sufficiently lit to facilitate surveillance;

(11) Ensure that trees, bushes, and other foliage outside of the RMD do not allow for a person or persons to conceal themselves from sight;

(12) Develop emergency policies and procedures for securing all product following any instance of diversion, theft, or loss of marijuana, and conduct an assessment to determine whether additional safeguards are necessary; and

(13) Develop sufficient additional safeguards as required by the Department for RMDs that present special security concerns.

(14) An RMD shall comply with all local requirements regarding siting, provided however that if no local requirements exist, an RMD shall not be sited within a radius of 50 feet of a school, daycare center, or any facility in which children commonly congregate. The 500 foot distance under this section is measured in a straight line from the nearest point of the facility in question to the nearest point of the proposed RMD.

725.600: Municipal Requirements

(A) An RMD and other registered persons shall comply with all local rules, regulations, ordinances, and bylaws.

(B) The Department does not mandate any involvement by municipalities or local boards of health in the regulation of RMDs, qualifying patients with hardship cultivation registrations, or any other aspects of marijuana for medical use. However, nothing in 105 CMR 725.000 shall be construed so as to prohibit lawful local oversight and regulation, including fee requirements, that does not conflict or interfere with the operation of 105 CMR 725.000.

725.650: Non-conflict with Other Law

(A) Nothing in 105 CMR 725.000 shall be construed to limit the applicability of other law as it pertains to the rights of landlords, employers, law enforcement authorities, or regulatory agencies.

(B) Nothing in 105 CMR 725.000:

(1) Allows the operation of a motor vehicle, boat, or aircraft while under the influence of marijuana;

(2) Requires any health insurance provider, or any government agency or authority, to reimburse any person for the expenses of the medical use of marijuana;

(3) Requires any health care professional to authorize the use of medical marijuana for a patient;

(4) Requires any accommodation of any on-site medical use of marijuana in any place of employment, school bus or on school grounds, in any youth center, in any correctional facility, or of smoking medical marijuana in any public place;

(5) Supersedes Massachusetts law prohibiting the possession, cultivation, transport, distribution, or sale of marijuana for nonmedical purposes;

(6) Requires the violation of federal law or purports to give immunity under federal law;

(7) Poses an obstacle to federal enforcement of federal law.

(C) Nothing in 105 CMR 725.000 shall be construed to limit the scope of practice of a nurse practitioner pursuant to M.G.L. c. 112, § 80I.

Additional Reference Materials: DPH Guidance for Municipalities



CHARLES D. BAKER
Governor

KARYN E. POLITO
Lieutenant Governor

The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
Bureau of Health Care Safety and Quality
Medical Use of Marijuana Program
99 Chauncy Street, 11th Floor, Boston, MA 02111

MARYLOU SUDDERS
Secretary

MONICA BHAREL, MD, MPH
Commissioner

Tel: 617-660-5370
www.mass.gov/medicalmarijuana

Guidance for Municipalities Regarding the Medical Use of Marijuana
Updated August 2015

The following information is provided to assist municipalities in addressing questions related to the marijuana for medical use. Additional information is available on our website at mass.gov/medicalmarijuana or by contacting our support center at (617) 660-5370 or medicalmarijuana@state.ma.us.

Department of Public Health Regulations & Local Laws or Regulations

Role of Municipalities. The Department of Public Health Regulations, 105 CMR 725.000, et. seq. (the "Regulations")¹ implementing the Humanitarian Medical Use of Marijuana Act, Ch. 369 of the Acts of 2012 (the "Act")² recognize the role of municipalities in adopting local laws and regulations regarding uses related to marijuana for medical use that are appropriate for their community.

Local Option. The Department does not, however, mandate any involvement by municipalities or local boards of health in the regulation of registered marijuana dispensaries ("RMDs"), qualifying patients with hardship cultivation registrations, or any other aspects of marijuana for medical use. 105 CMR 725.600(B).

Compliance with Local Law. The Regulations require RMDs and all other persons registered with the Medical Use of Marijuana Program to comply with all local ordinances, bylaws and regulations. 105 CMR 725.600(A). Nothing in the Regulations will be construed to prohibit lawful local oversight and regulation that does not conflict or interfere with the operation of 105 CMR 725.000. 105 CMR 725.600(B). For example, 105 CMR 725.110(A)(11) requires that an RMD must "[e]nsure that trees, bushes, and other foliage outside of the RMD do not allow for a person or persons to conceal themselves from sight..." Local ordinances or bylaws may not require landscaping that would conflict with this provision.

The Attorney General's Office has issued decisions regarding bylaws or ordinances that it believes to conflict with state law, including a bylaw attempted to prohibit RMDs, a bylaw requiring all registered qualified patients within a municipality to register with the municipality, bylaws requiring personal caregivers or anyone engaged in home cultivation to register with local officials who are not law enforcement personnel, bylaws requiring a special permit for home cultivation, bylaws limiting home cultivation to a particular area in the community, bylaws prohibiting home delivery, bylaws requiring buffer zones around home cultivation sites, and bylaws requiring RMDs to comply with federal law. For

¹ <http://www.mass.gov/eohhs/docs/dph/regs/105cmr725.pdf>

² <https://malegislature.gov/Laws/SessionLaws/Acts/2012/Chapter369>

more information on the decisions of the Attorney General's Office regarding bylaws or ordinances regarding marijuana for medical use, please consult the website for the Attorney General's Office at <http://www.mlu.ago.state.ma.us/>.

Municipalities must use their best judgment in crafting local requirements, so as not to create a conflict with 105 CMR 725.000. When in doubt, the municipality should consult its Town Counsel or City Solicitor.

Buffer Zone. One opportunity for municipalities to exercise local control over the placement of RMDs in their community is the setting of a buffer zone. The Regulations, 105 CMR 725.110(A)(14), state:

A RMD shall comply with all local requirements regarding siting, provided however that if no local requirements exist, a RMD shall not be sited within a radius of five hundred feet of a school, daycare center, or any facility in which children commonly congregate. The 500 foot distance under this section is measured in a straight line from the nearest point of the facility in question to the nearest point of the proposed RMD.

The Department measures the distance from building to building rather than property line to property line. A facility is not, however, limited to a building. For example, a playground outside a school would be considered a facility where children congregate, so in that case the line would be measured from the edge of the playground to the nearest point of the building that would house the potential RMD. If a municipality enacts its local bylaw or ordinance regarding the buffer zone, it may also determine its own standard of measure.

The Department interprets a "facility in which children commonly congregate" to include facilities in which children are gathered for a particular purposes in a structured and scheduled manner or which are dedicated to the use of children, such as playgrounds, youth services programs, day care centers, youth sports facilities, dance schools, and gymnastic schools. It includes a private home housing a family day care center, but not a private home where children happen to live. It does not include other facilities, such as ice cream shops, where children may happen to congregate, but not in a structured, scheduled manner.

Municipalities may set their own buffer zone, but if they do not, the default buffer zone will be the 500 foot distance described in the Regulations.

Local Permitting. Municipalities are not required to wait for DPH to issue an RMD a Provisional Certificate of Registration before acting on local permit applications, but may elect to require an RMD to demonstrate that it has received such a registration first. Please note, however, that under the Regulations, 105 CMR 725.100(B)(5)(f), an RMD must submit architectural plans to the Department prior to construction or renovation of an RMD. Proceeding with construction or renovation without Department approval is done at the applicant's risk and any construction or renovation already performed may need to be changed at the applicant's expense.

Registered Marijuana Dispensaries

Vertically-Integrated System. In Massachusetts, the RMDs are required to be "vertically-integrated," which means RMDs grow and process their own marijuana, with limited exceptions, rather than purchasing marijuana from a supplier.

Non-Profit Requirement. Only an entity that is incorporated in Massachusetts as a non-profit corporation under M.G.L. c. 180 can apply to operate an RMD.

Retail v. Cultivation. An RMD may have a retail facility, as well as cultivation and processing operations. Some RMDs elect to do cultivation, processing and retail operations all in one location, which is commonly referred to as a “co-located” operation. An RMD may also choose to have a retail dispensary in one location and grow marijuana at a remote cultivation location. It may conduct the processing of the marijuana at either the retail dispensary location or the remote cultivation location. The remote cultivation location need not be in the same municipality or even the same county as the retail dispensary.

Multiple RMDs. A non-profit corporation may operate up to 3 RMDs. The retail dispensaries of one non-profit corporation may share a remote cultivation facility. Different non-profit corporations may not, however, share a remote cultivation facility with each other.

Amount of Marijuana. There is no specified numeric maximum amount that an RMD may have on its premises. The Regulations require that RMDs must limit their inventory of seeds, plants, and useable marijuana to reflect the projected needs of registered qualifying patients. 105 CMR 725.105(G)(1).

Number of RMDs per Municipality. It is up to a municipality to determine how many RMDs it deems appropriate for the community. The municipality may express that determination through granting or denying a request by an applicant for a letter of support or non-opposition. An RMD will not be permitted to proceed to the Inspections Phase if it has not obtained a letter of support or non-opposition.

Taxation. The Department of Revenue (“DOR”) has determined that the sales tax exemption for prescription medicine in G.L. c. 64H, § 6(l) applies to sales of marijuana and products containing marijuana to a qualifying patient or the patient’s personal caregiver pursuant to a written certification by a licensed physician. Any other supplies, educational materials or other items sold by the medical marijuana treatment center are subject to tax unless another exemption applies. For further information, please consult the DOR website: <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/directives/directives-by-years/2015-directives/dd-15-1.html>; or consult your Town Counsel or City Solicitor for further information.

Other Activities at an RMD. An RMD is defined as a non-profit entity “that acquires, cultivates, possesses, processes (including development of related products such as edible MIPs, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers.” An RMD is not a health care provider or a provider of general wellness services. Under the Regulations, 105 CMR 725.105(N)(7), an RMD may not sell any products other than marijuana, marijuana-infused products (MIPs), marijuana seeds, and other products such as vaporizers that facilitate the use of marijuana for medical purposes. RMDs may, however, conduct a patient education program in compliance with the Regulations, 105 CMR 725.105(K).

Hours of Operation. The Regulations do not specify particular hours of operation. Municipalities may set reasonable requirements in this regard.

Home Delivery. The Regulations permit, but do not require, home delivery to registered qualifying patients and personal caregivers within the Commonwealth.

Limitations on Entry. Only registered qualifying patients, personal caregivers, dispensary agents and authorized state and local officials may enter an RMD, with strictly limited exceptions.

Patient Choice. Qualifying patients may choose to purchase from different dispensaries from around the Commonwealth. RMDs are required to track purchases in the Medical Use of Marijuana Online

Registration System so that patients are not permitted to purchase more than the amount their physician has certified as appropriate for their debilitating medical condition.

Coordination with local law enforcement. The Regulations require RMDs to coordinate with local enforcement regarding panic alarms, providing hours of operation, after-hours contact information and access to RMD surveillance operations; as well as requiring dispensary agents to produce their Program ID Card to law enforcement upon request.

Certain issues must be reported to local law enforcement, often within 24 hours: diversion of marijuana; unusual discrepancies identified during inventory, theft, loss and any criminal action; unusual discrepancy in weight or inventory during transportation; any vehicle accidents, diversions, losses, or other reportable incidents that occur during transport; any suspicious act involving the sale, cultivation, distribution, processing, or production of marijuana by any person; unauthorized destruction of marijuana; any loss or unauthorized alteration of records related to marijuana, registered qualifying patients, personal caregivers, or dispensary agents; an alarm activation or other event that requires response by public safety personnel; failure of any security alarm system due to a loss of electrical power or mechanical malfunction that is expected to last longer than eight hours; and any other breach of security.

Ongoing Inspections. The Department will conduct ongoing inspections of RMDs after they open, including scheduled and unscheduled inspections. If local officials encounter issues with an RMD, they should contact the Medical Use of Marijuana Program at (617) 66-5370 or RMDcompliance@state.ma.us.

Annual Registration Renewal. RMDs are required to renew their registration annually with the Department.

The RMD Application Process

Overview. DPH will evaluate the applications received on or after June 29, 2015 on a rolling basis, with priority given to the review of applicants proposing to site an RMD in an Open County. Each successful applicant will be notified that they are authorized to proceed to the Inspection Phase, during which they may seek all required local permits, and when authorized by their community, commence building out the RMD. The Inspections Phase also includes evaluation of documentation prepared in compliance with the Regulations and guidance provided by the Department regarding the operation of a nonprofit RMD. After passing all applicable local and state inspections, an RMD may receive a Final Certificate of Registration.

Role of Municipalities. Municipalities should determine what local permits or licenses may be required if a RMD wishes to locate there, and consult their Town Counsel or City Solicitor if there are any questions about the required process.

Proposed Locations. As part of the application process, an RMD applicant will submit an *Application of Intent*, a *Management and Operations Profile*, and a *Siting Profile* in sequential order. An applicant must be formally invited by the Department in writing in order to submit a *Management and Operations Profile* or *Siting Profile*. An RMD applicant does not inform the Department of their proposed RMD location(s) until the time of submission of the *Siting Profile*.

Letters of Support or Non-Opposition. RMDs may approach municipal officials to acquire letters of local support or non-opposition, which is required for the *Siting Profile* portion of the application. An RMD is required to obtain a letter of support or non-opposition from its host community before it will be

permitted to proceed to the Inspection Phase. In terms of the evaluation, there is no difference between a letter of support or a letter of non-opposition. Either letter will satisfy the requirement.

If the applicant is proposing a retail dispensary location and a remote cultivation facility, the applicant must submit a letter of support or non-opposition from both municipalities. This letter may be signed by (a) the Chief Executive Officer/Chief Administrative Officer, as appropriate, for the desired municipality; or (b) the City Council, Board of Alderman, or Board of Selectmen for the desired municipality. The applicant's choice of (a) or (b) should be done in consultation with the host community. Each letter requires that particular language be included in the letter, as provided in Section C of the *Siting Profile*. If the applicant and the host community choose (b), please note that the template language requires the signor to state that there was a vote to sign the letter taken at a duly noticed meeting and to identify the date of that meeting.

Notification of Municipality. After receiving an invitation to submit a *Management and Operations Profile*, the applicant must Notify the chief administrative officer, or equivalent, and chief of police, or equivalent, of the proposed city or town in which an RMD would be sited, if applicable, and the sheriff of the applicable county, of the intent to submit a *Management and Operation Profile* and a *Siting Profile*.

Municipal Approval Prior to Opening. Before an RMD can open, it must comply with all local rules, regulations, ordinances and bylaws, in addition to all applicable state laws.

Home Cultivation

Eligibility: The Regulations allow for home cultivation, also known as “hardship cultivation” when a qualifying patient meets at least one of three criteria:

- Verified financial hardship;
- Physical incapacity to access reasonable transportation;
- Lack of an RMD within a reasonable distance.
-

Until the Department announces the registration of home or hardship cultivators, qualifying patients and personal caregivers are permitted to engage in limited cultivation in compliance with the Regulations.

Where. Home cultivation may only occur at either the qualifying patient's or personal caregiver's primary residence, but not both.

How. Cultivation and storage must occur in an enclosed, locked area, not visible for the street or other public areas. Only an amount sufficient to provide the qualifying patient with a sixty day supply may be cultivated.

Online Registration System

Who. The Online Registration System provides online certification and registration for qualifying patients, as well as registration for physicians, personal caregivers and dispensary agents. Pediatric patients are registered through a paper process.

Accessible. The Online Registration System allows access for law enforcement 24 hours a day, 7 days a week.

Verification. The Online Registration System allows law enforcement to verify that an individual may legally possess marijuana.

Real-Time. The Online Registration System allows real-time updates of certification and registration information.

Secure. The Online Registration System has appropriate security and access limitations to protect sensitive or confidential information.

Additional Information. Further information regarding the Online Registration System may be found on the Medical Use of Marijuana Program website:

<http://www.mass.gov/eohhs/gov/departments/dph/programs/hcq/medical-marijuana/patients-and-caregivers.html>.

Public Records

Protection of RMD Security Information. Municipalities may receive information about RMDs in the course of the local permitting process that may compromise the RMD if disclosed.

Municipalities may refer to exemption (n) to the definition of “public records” in M.G.L. c. 4, s. 7, which provides that the following are exempt from disclosure as public records:

“(n) records, including, but not limited to, blueprints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation or other infrastructure located within the commonwealth, the disclosure of which, in the reasonable judgment of the record custodian, subject to review by the supervisor of public records under subsection (b) of section 10 of chapter 66, is likely to jeopardize public safety.”

Municipalities should consult with their Town Counsel or City Solicitor regarding Public Records laws and use their best efforts to keep confidential any information that, if released, may jeopardize public safety.