



Director John Collins
Pennsylvania Department of Health
Office of Medical Marijuana
Room 628, Health and Welfare Building
625 Forster Street
Harrisburg, PA 17120-0701

January 8, 2021

Mr. Collins,

The November 5, 2020 correspondence from the Pennsylvania Department of Health (“DOH”) Office of Medical Marijuana addressing the security and surveillance requirements outlined in 28 PA Code §1151.26 and §1161.31 creates an undue burden on the Commonwealth’s licensed medical marijuana operators (“MMO”). In the correspondence, the DOH nullified the surveillance systems that use motion-activated cameras, and states that MMOs must replace their motion-activated equipment with cameras that record continuously by February 5, 2021.

The plain language of 28 PA Code §1151.26 and §1161.31 requires: “A professionally-monitored security and surveillance system that is operational 24 hours per day, 7 days per week and records *all activity* in images capable of clearly revealing facial detail [emphasis added].” Without material issue, this regulation was implemented by all MMOs, with many opting to use motion-activated surveillance cameras to fulfill the “*all activity*” requirement. The DOH’s shift is in direct conflict with surveillance systems and security plans that were previously approved by DOH, both in applications and then in subsequent written plans and inspections to deem MMO’s operational, including inspections as recently as last quarter.

Notwithstanding the extra-regulatory nature of the correspondence, available bandwidth will determine the cost and timeliness of operators to be able to implement the interpretation. In the case of Grower Processors (“GP”), there was an incentive to locate facilities in ACT 47 regions. Many of these regions do not have readily available fiber connections and establishing these connections can take many months. When added to the two-year retention requirement, the burden placed on operators is insurmountable and will result in increased patient cost, with no correlation to increased patient safety or relative compliance value. For context, a cost estimate of the data storage and maintenance for continuous surveillance recordings is set forth below:

Dispensary Costs: Two-Year Continuous Surveillance and Data Retention

■ 24/7 Data Storage -- 730 days	\$100,000
■ Software System	\$24,000
■ Backup Generator Capacity	\$10,000
■ Total Cost Per Dispensary / 2 yr.	\$134,000

Cultivation Costs: Two-Year Continuous Surveillance and Data Retention (32K sq ft facility with 6K of Canopy)

■ 24/7 Data Storage -- 730 days	\$500,000
■ Software System	\$72,000
■ Backup Generator Capacity	\$20,000
■ Total Cost Per Cultivation Site / 2 yr.	\$592,000

The added expense of this new regulatory interpretation is different for every operator, but be assured that it would be substantial, totaling hundreds of thousands of dollars for even mid-sized operators. Coupled with the requirement to capture two years' worth of uninterrupted video, the bandwidth required cannot be obtained in the timeline set forth, or at a reasonable cost, since the required infrastructure is not fast or freely available in the areas where many MMOs are located.

The February 5th interpretation is not only extra-regulatory, costly, and almost impossible for many MMOs because of the required bandwidth, it is also unnecessary from a security standpoint. Notably, Pennsylvania MMOs are subject to some of the most stringent video retention requirements of any program in the country. For comparison, the next highest data retention requirement is at Illinois cultivation sites, requiring a mere 180 days of video retention, and allows for the use of motion-activated cameras. Maryland, Massachusetts, New York, and Ohio all require 90 days of video retention at dispensary and cultivation sites. The requirement detailed in the correspondence would subject GPs to maintain more data within their video retention systems than that of the entire Library of Congress.

Finally, under this new interpretation, dispensary permittees will increase their surveillance recording hours by more than 500%, and GPs will increase recorded hours by more than 1000%. The requirement to continuously record on premises without interruption at this rate increases the likelihood of the failure rate of these systems. By requiring continuous recording the "burn rate" or failure of surveillance hardware and hard drives increases, which could result in missing video retention of relevant activity. Of course, the increased failure rate also increases up front and ongoing maintenance costs. The amount of data required to be stored by this new interpretation would include countless hours of recordings of dark rooms, providing no value to operators, regulators, or investigators from a compliance or security standpoint.

In short, the original interpretation of the security and surveillance regulations allowing for motion-activated cameras alleviates significant data retention, hardware, and maintenance cost for medical cannabis businesses, and actually strengthens the facility security systems as a result. Allowing motion-activated surveillance does not sacrifice any deterrent or investigatory impacts to the safety and security of MMO facilities. A motion-activated camera records all activity on facility premises, including any actual or attempted security breaches, quality assurance issues, safety issues, and all other meaningful activities.

As an industry we share DOH's goals of bringing affordable medical products to our patients and using safe and secure facilities throughout the supply chain to do so – this recent interpretation accomplishes neither. Therefore, we respectfully request that the newest interpretation be retracted. Should there be a particular issue that the DOH is trying to solve for, I believe that the industry can provide feasible and effective solutions to accomplish resolution.

Sincerely,



Meredith V. Buettner
Executive Director
Pennsylvania Cannabis Coalition

CC:

Secretary Rachel Levine
Executive Deputy Secretary Sarah Boateng
Art McNulty, Office of Medical Marijuana
Representative Kathy Rapp
Senator Michele Brooks