

Mark Nye has been working in the public and private sector sides of the cannabis industry since 2015. He has participated in the creation and implementation of cannabis regulatory programs in multiple states at both the state and local level, and has consulted for several other state agencies tasked with the same. Beginning in 2015, Nye served as a Special Agent for the Clark County Nevada Department of Business License, where he was assigned to compliance, enforcement, and licensing duties for over 120 cannabis businesses in the Las Vegas metro area. In mid-2016, he was recruited by staff in then Governor John Kasich's office to join the Ohio Department of Commerce as part of a small team that would build the Ohio Medical Marijuana Control Program in the wake of the passage of Ohio House Bill 523. The majority of his time at the Department of Commerce was spent as Director of Compliance for the MMCP, where he developed the state's administrative codes governing the program, compliance protocols, and application and licensing procedures.

Nye is the current Vice President of Operational Compliance for multi-state cannabis operator Parallel, the parent company of Goodblend (PA & TX), New England Treatment Access ("NETA," MA), and Surterra (FL). He leads a staff of over 30 cannabis professionals in furtherance of the company's efforts to develop robust compliance, regulatory affairs, quality assurance, licensing & permitting, and environmental health & safety programs.

Nye received both his master's degree in Environmental Science and bachelor's degree in Microbiology from The Ohio State University.

The testimony contained herein represents Nye's own opinions based on his experiences in and with the cannabis industry. Nothing in this testimony should be construed to be reflective of the opinions or positions of Parallel, Inc., the Ohio Department of Commerce, the Ohio Medical Marijuana Control Program, or the Clark County Nevada Department of Business License.

In my experience, there are several key strategies that state and local governments can employ to create and maintain successful cannabis regulatory programs that meet the goals of the legislatures, executive branches, and regulatory agencies. A well-formed cannabis regulatory program should accomplish the purpose of making safe cannabis products available to those citizens of or visitors to a state who are legally entitled to possess and use them. The program can and should address the concerns of the executive branch, the legislature, and the regulatory agency while still allowing the industry to operate as efficiently as possible.

Clearly Stated Objectives and Guiding Principles

The states that I have seen experiencing the greatest success with their cannabis regulatory programs have done so under the auspices of clearly stated goals. Legislatures, executive branches, and regulatory agencies should clearly define the goals of their programs when writing laws and regulations and creating and implementing administrative protocols. Is the goal to provide the safest possible products for the consumers in your state? To eliminate or disrupt the illicit cannabis market in your state? These questions should be asked and answered prior to making effective new legislation or regulations, because the approach to writing and developing regulations will be different based on the stated goals.

For example, there are states whose primary goal in creating an adult use cannabis program was to disrupt their state's illicit cannabis market. Accordingly, those states did not place limits on the number of cannabis permits that the regulatory agency would issue or establish licensee qualifications or prerequisites that would bar large numbers of interested parties from entering the regulated cannabis industry. Rather, they issued cannabis licenses to any and all qualified candidates. While this approach has its downsides – namely a saturated market that leads to difficulties in maintaining sustainable profit margins for licensed businesses as well as increased likelihood of diversion of regulated market products into the illicit market in *other* states – it is nevertheless an approach that is borne out of a specific guiding principle. Contrastingly, other states created medical cannabis programs as a measure to stave off adult use legalization for as long as possible. The goal of these programs is simply the availability of cannabis to specific groups of people under specific sets of circumstances, with no thought toward disruption of the illicit market.

Regardless of the goal, establishing it at the outset will serve as a guide to help in establishing compliance, enforcement, and licensing protocols that will contribute to the overall success of the program. This strategy will also allow writers of new regulations to determine what requirements and restrictions they wish to place on the regulatory agency – where to incorporate discretion vs. where to incorporate specific, plain language obligations. A credible and successful cannabis regulatory program follows its own rules and delivers on its stated obligations and legislative mandates.

Communication & Transparency

It is essential that any regulatory agency overseeing a cannabis program clearly state their expectations to their licensee base. Utilizing readily available tools such as regular newsletters, the issuance and archiving of formal guidance documents, and the accessibility of knowledgeable agency staff, a regulatory agency can outline and update its interpretations of regulations, communicate forthcoming changes, and give critical status updates to its licensee base. This approach creates an environment in which licensed cannabis businesses are able to integrate the regulatory agency's expectations into their operational protocols, eliminating much of the need for enforcement actions and the associated stress on agency resources. It also allows for an open dialogue between the public and private sector sides in the event that there are agency expectations that are not practical for the industry to meet. In many cases, the matters at hand are as new to the people in the private sector as they are to the people in the public sector. Conversation between the two sides eases of the "growing pains" that are inherent to any new regulated industry.

For example, in my time as Director of Compliance for the Ohio Medical Marijuana Control Program at the Department of Commerce, every licensee of the program had at least one person on staff who had my direct phone number as well as that of their assigned compliance field agent, and they were encouraged to use them whenever necessary. We established a culture of "ask for permission, not forgiveness" by making staff available to answer questions, make facility visits, and generally assist the licensed business in understanding the actions that would help them maintain compliance with applicable regulations. The general message was "ask, don't guess – too much information is better than not enough." The philosophy behind this approach was to utilize communication as first resort, enforcement as last resort. This is not to say that enforcement actions did not occur, but they were infrequent and only necessary in extreme cases. The majority of problems were solved before enforcement action became necessary.

It is also critical for the agency to share with the industry as much as possible about its intentions and inner workings. This gives industry stakeholders the opportunity to give feedback to the agency that can be extremely valuable when trying to ensure that the agency, executive branch, and legislature's concerns are addressed in a manner that is practical for the industry from an operational standpoint.

Engage Subject Matter Experts

When crafting new laws and rules for a cannabis regulatory program, it is absolutely critical to engage experts who understand how the industry works as well as how the products are manufactured, bought, sold, and consumed. It is very likely that impractical or nonsensical requirements and restrictions will find their way into laws and rules if the writers do not have a thorough understanding of the products and producers to which the regulations will apply. In recent years, it has become popular to propose that states "regulate cannabis like alcohol." While this principle is tempting and may seem convenient, and in some areas is the line of best fit, it ignores the fact that cannabis in and of itself is not like alcohol. Concepts like ABV and proof do not apply to cannabis, and so-called "potency" (i.e. THC content), is not directly-correlatable to a state of impairment¹. The best example of these principles gone awry is in the inclusion of THC limits in laws and rules: Some states have thought it prudent to limit the amount of THC in manufactured cannabis products by a percentage, ignoring the fact that this concept is not applicable to products that are manufactured and consumed based on milligrams of THC. Additionally, the product types to which the concept does apply must then have ingredients added to them that would not otherwise be there in order to fall below an arbitrary line. There are far too many variables in play

to make a blanket assumption that a higher “potency” cannabis product is automatically and inherently less safe than a lower “potency” product.

Single Regulatory Agency

A successful cannabis regulatory program should involve a single agency or division with a specific mandate. The challenges of involving multiple agencies in a cannabis regulatory program range from logistic to political to philosophical, and almost always cause unnecessary inefficiencies. A single agency may have staff dedicated to medical cannabis regulations if they are separate from adult use regulations, but at the core, these programs involve the same activities, and should be regulated in largely the same way.

Individual-level Agent Registration

Institute a program whereby individuals who may work in the cannabis industry obtain a license to do so from the regulatory agency on their own. This allows the state to control the background checking process for each individual rather than having that process facilitated by licensed cannabis entities. It also eliminates the redundancy associated with tying an individual’s agent registration to a specific entity license. (i.e. If an individual works for a vertically integrated entity holding more than one license, they should not need multiple agent registrations.)

Terminology

Avoid antiquated terminology when writing laws and rules. The term “marijuana” is a slang term that traces its roots back to discriminatory propaganda, and as such, should not be used in an official capacity. Doing so would be analogous to using the term “booze” in regulations pertaining to alcohol. The term “cannabis” is the scientifically correct manner by which to refer to the genus of the plant in question, and should therefore be used in writing laws, regulations, and official communications. Likewise, the term “recreational” in the context of cannabis is not only presumptive, but also answers a question which should not be asked by a government entity: “*why* is an individual using cannabis?” Instead, the term “adult use” should be used in laws and regulations, as it is the true descriptor of the group of people who are legally permitted to possess and use cannabis, regardless of an individual’s reason for doing so.

Place Limits on Local Municipalities

Local jurisdictions should be given an appropriate amount of authority over cannabis businesses located within their limits, but under no circumstances should they be allowed to extort exorbitant fees from cannabis businesses that are not directly-related to any expense they would incur regulating those businesses.

1. Bidwell LC, Ellingson JM, Karoly HC, et al. Association of Naturalistic Administration of Cannabis Flower and Concentrates With Intoxication and Impairment. *JAMA Psychiatry*. 2020;77(8):787–796. doi:10.1001/jamapsychiatry.2020.0927