

## **Inaccurate Statements Regarding AUMA in the UCSF Paper by Barry/Glantz**

***“The initiatives are written primarily to create a new business and only include minimal protections for the public that are unlikely to prevent public health harms caused by the burgeoning marijuana industry.” (p.3.)***

This is not an accurate statement with respect to AUMA for several reasons.

First and foremost, “protection of the public” is the “highest priority” of the Bureau of Marijuana Control, the lead regulatory agency designated by the initiative. If there is ever a conflict between public protection and commercial interests, the Bureau is legally obligated to view protection of the public as the “paramount” interest. (See B&P § 19303; AUMA Proposed B&P § 26010(b) [providing that newly named “Bureau of Marijuana Control” shall succeed to “all duties” required of existing Bureau of Medical Marijuana Regulation, which include duty under existing B&P § 19303 to make public protection its highest priority].)

Second, AUMA explicitly requires state regulators to evaluate the several public health-related factors when determining to issue or renew a marijuana business license and empowers state regulators to deny a license or renewal based on those factors. For example, regulators must consider – and may deny a license application or renewal – based on factors such as whether issuance of the license or renewal would encourage underage use or adult abuse of marijuana, result in an excessive concentration of marijuana businesses in a particular area, or present an unreasonable risk of minors being exposed to marijuana or marijuana products. (AUMA Proposed B&P § 26051.)

Third, AUMA requires independent testing of all commercial non-medical marijuana and marijuana products, with both testing and manufacturing licensees being licensed and supervised by the Department of Public Health. (AUMA Proposed B&P § 26100.) The type of testing for non-medical marijuana and marijuana products will be similar to the requirements imposed under the medical marijuana legislation recently enacted by the Legislature and signed into law by Governor Brown. (*Id.* at §§ 26101-26104; 26110.)

Fourth, AUMA establishes even stricter packaging and labeling requirements than contained in the medical marijuana legislation recently enacted by the Legislature and signed by Governor Brown. For example, AUMA requires all labels on marijuana and marijuana product packages to contain a specific warning about the potential harm of using marijuana while pregnant or breastfeeding, and requires all marijuana product labels to warn users that they effects of marijuana products may be delayed by several hours and requires those labels to disclose the same nutritional information as all other food products. (AUMA Proposed B&P § 26120.) AUMA also prohibits marijuana products from being designed to be appealing to children, requires marijuana products to be sold in standardized dosages, and requires consumers to be provided sufficient information to enable informed consumption, including potential side effects. (*Id.* at § 26130.)

***“The regulatory licensing authorities defined in the pending marijuana legalization initiatives are agencies whose primary goals are to create a competitive marketplace for businesses, not protect public health.” (p.4.)***

Not true for AUMA. As discussed above, “protection of the public” is the “highest priority” of the Bureau of Marijuana Control, the lead regulatory agency under AUMA.

***“The marijuana advisory committees created in the initiatives contain marijuana industry representatives, so are unlikely to prioritize public health over maximizing business potential.” (p. 4)***

**And**

***“The initiatives include marijuana industry representatives on advisory committees rather than independent public health experts.” (p. 16.)***

These statements are misleading with respect to AUMA. AUMA requires the Bureau of Marijuana Control to convene an advisory committee for the specific purpose of advising the Bureau and the other state licensing authorities “on the development of standards and regulations . . . including best practices and guidelines that protect public health and safety.” (Proposed B&P §26014(a).) Moreover, AUMA requires that “public health experts” be included as members of this advisory committee, in addition to representatives from state regulatory agencies, the marijuana industry and other subject matter experts.

***“Without broad-based media campaigns aimed at the general public (not just youth), California is at risk of reversing years of progress on tobacco control as well as increasing the potential health costs associated with legalizing marijuana.” (p. 4.)***

This statement inaccurately suggests that AUMA does not require a broad-based public information campaign aimed at educating the general public. In fact, AUMA requires the Department of Health Care Services to establish and implement a comprehensive public information program no later than September 1, 2017 aimed at the general public – not just youth. This public information program will, at a minimum, describe AUMA’s provisions, the scientific basis for limiting access to marijuana and marijuana products to persons 21 years of age and older, the penalties for providing access to marijuana and marijuana products to persons under the age of 21 years, and provide information regarding the dangers of driving a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation while impaired from marijuana use, the potential harms of using marijuana while pregnant or breastfeeding, and the potential harms of overusing marijuana or marijuana products. (Proposed B&P § 26211(c).)

***“The initiatives do not provide funding or time to conduct scientific research to gain a comprehensive understanding of the evolving adverse health effects of legalizing marijuana on population health that can be used to modernize regulation as understanding of these effects improves.” (p. 4.)***

Again, not true. AUMA prioritizes the expenditure of tax revenues for research – including the “impacts [of marijuana] on public health,” “public safety issues related to marijuana use,” and

“the health-related effects among users of varying potency levels of marijuana and marijuana products” – as second only to ensuring sufficient funding to support the state agencies tasked with regulating marijuana. (Proposed Revenue and Taxation § 34019(b).)

***“The marijuana product safety and testing standards will be based on voluntary codes established by industry organizations not independent public health agencies, so could compromise public health for the sake of business.”***

Patently false with respect to AUMA. AUMA places the manufacturing and testing of marijuana and marijuana products under the supervision and control of the Department of Public Health – the same state agency that oversees the manufacture and testing of medical marijuana. (Proposed B&P § 26100.) AUMA enacts specific requirements for testing of marijuana and marijuana products and empowers the Legislature and/or DPH to impose additional requirements as needed. (*Id.* at §§ 26101-26110.) Moreover, as discussed above, AUMA imposes rigorous packaging and labeling requirements for marijuana and marijuana products. (*Id.* at §§ 26120; 26130.) It is simply not true that AUMA leaves product safety and testing standards to “voluntary codes.”

***“Neither [initiative] establishes limits on the number or type of licenses issued to the same person or entity.” (p.12)***

This is not accurate for AUMA. AUMA limits those holding the largest cultivation license category from being both producers and distributors. (Proposed B&P § 26062(e).) Those holding testing licenses are also not allowed to hold a license of any other type and cannot have an ownership interest in other non-testing licensees. (*Id.* at § 26100(c).)

***“Neither establishes health education and prevention programs for the general public.” (p.12.)***

This is not accurate for AUMA. Sixty percent of the tax revenues raised by AUMA is dedicated to the youth prevention account which states specifically “If the Department of Finance ever determines that funding pursuant to marijuana taxation exceeds demand for youth prevention and treatment services in the state, the departments shall provide a plan to the Department of Finance to provide treatment services to adults as well as youth using these funds.” (Proposed R&T § 34019(f)(1)(N).)

***“Neither requires the state to publish reports on the successes, failures, and challenges of implementation of the new laws that would allow the public and stakeholders to recommend corrections.” (p.12)***

This is not accurate for AUMA. AUMA dedicates \$10 million per year from tax revenues to research and requires a report every two years be made publicly available. (Proposed R&T § 34019(b).) Additionally the AUMA advisory committee must publish an annual report that shall be made publicly available. (Proposed B&P § 26014(c).)

***“Neither initiative provides funding for marijuana prevention and control programs aimed at youth, young adult, or adult populations.” (p. 13.)***

This is not accurate for AUMA. Sixty percent of tax revenues under AUMA go to youth treatment and prevention. (Proposed R&T § 34019(f)(1).)

***“Both initiatives permit local governments adopt exemptions for indoor marijuana use inside retail stores and marijuana clubs.” (p. 13.)***

AUMA permits local governments to allow on-site consumption by licensed retailers and microbusinesses, but not in so-called “marijuana clubs.” (Proposed B&P § 26200(d).)

***“Neither initiative prohibits highly potent marijuana products that may resemble cookies or candy.” (p. 13.)***

Not true for AUMA, which specifically provides that marijuana products can’t be designed to be confused with commercially sold candy or foods that do not contain marijuana. (Proposed B&P § 26130(a)(1).)

***“The California Department of Public Health, the agency with experience implementing effective tobacco prevention and control programs, is not in charge of a similar program for marijuana.” (p.14.)***

Misleading with respect to AUMA. AUMA designates DPH as one of the three regulating agencies and provides that DPH, along with the Department of Education, will receive funds from the youth treatment and prevention account for purposes of implementing and administering youth treatment and prevention programs.

***“Research priorities favor growth of the industry while ignoring the need for marijuana-induced disease research as a foundation for future policy.” (p.14.)***

Not accurate. The first research priority under AUMA is impacts on public health, including health costs associated with marijuana use. (Proposed R&T § 34019(b).) None of the research priorities would favor industry growth.

***“Businesses, like the tobacco companies, will be permitted to market and sell products that contain nicotine, alcohol, caffeine, or other additives that make marijuana more addictive, potent, or toxic when consumed as intended.” (p.14.)***

Untrue with respect to AUMA. AUMA specifically prohibits marijuana businesses from being selling alcohol or tobacco products. (Proposed B&P § 26054.) This would preclude the sale of a product containing marijuana and alcohol or marijuana and tobacco. Additionally marijuana is sold in marijuana only stores—not supermarkets, not convenience stores, not target, not 7-11. This is a substantial improvement over the existing alcohol and tobacco model. Kids will not see the products sold or on display ever, nor will adults unless they intentionally enter a marijuana retail store.

***“Labeling requirements will not require state of the art tobacco control warning labels that are effective at informing consumers on the health risks associated with consuming a substance with adverse effects.” (p.14.)***

Misleading with respect to AUMA. AUMA specifically allows the Department of Public Health to require additional labels or health warnings from those specified in the initiative. (Proposed B&P § 26120(c)(11).)

***“Marijuana industry representation on decision-making boards raises serious public health and safety concerns.” (p.16.)***

Misleading with respect to AUMA. The advisory committee under AUMA is not a decision making board. As its name indicates, the role of the AUMA advisory committee is to “advise” the Bureau and state licensing authorities. (Proposed B&P § 26014(a).)

***“Because the licensing systems will be overseen by an advisory committee with marijuana industry representatives, it is unlikely that these members will require a licensing system with adequate enforcement or fees high enough to cover administrative and enforcement costs, or create penalties for retailers that violate the law, including license suspensions, fines and revocations.” (p.18.)***

Misleading with respect to AUMA. The licensing system under AUMA is not “overseen” by an advisory committee; it is overseen by the Bureau, the Department of Consumer Affairs, the Department of Public Health, and the Department of Food and Agriculture. (Proposed B&P §§ 26010; 26012.)

***“Except for companies licensed to test marijuana products, there are no limits on the number of licenses per stage of production. Licensees may be issued more than one license, and may hold licenses in multiple stages of production.” (p.18.)***

Inaccurate with respect to AUMA. There is a limitation on the largest class of cultivation license. (26061(e).) In AUMA there is also broad authority to deny a license or renewal application for a variety of reasons including monopolization. (*Id.* at § 26051.) There is no “right” under AUMA to obtain a license, and a license can be denied to prevent out of state diversion, which would allow cultivation licenses to be capped. (*Ibid.*) Also there is very strong local control for localities to completely ban marijuana businesses entirely. (*Id.* at § 26200.)

***“There are, however, no provisions preventing out-of-state businesses from entering the market through individuals acting as intermediaries.” (p.19.)***

This is not accurate for AUMA. AUMA defines “applicant” based on a percentage ownership in the business. Basically if you own more than 20% or have a greater than 20% investment you have to be a CA resident and meet all the other specific licensing requirements. (Proposed B&P 26001(a).)

***“The AUMA initiative appropriately prohibits sales of marijuana to minors (defined as under age 21) and prohibits anyone under the minimum age be allowed in any store that sells marijuana and marijuana products, including staff. This provision is stronger than regulations for retail alcohol stores, which explicitly allow underage people in convenience stores.106 However, AUMA fails to include other important provisions that will prevent underage access and appeal including vending machine, internet, and mail order sales, coupons, promotional discounts, and sales of flavored products, including THC-containing e-liquid.” (p.19.)***

Misleading. Sales of any kind are only allowed through licensed marijuana retail outlets. So no person under 21 would have access to a vending machine. Additionally IDs are required to be presented before each sale. AUMA also gives the DPH discretion to regulate and limit products.

***“The AUMA initiative also prohibits marijuana businesses within a 600-foot radius (and prohibits marijuana advertisements and marketing within a 1,000-foot radius; detailed below) of “a school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center that is in existence at the time the license is issued, unless a licensing authority or a local jurisdiction specifies a different radius.” The number of available licenses will be limited based on population only if such limitation did not impede development of the legal market or perpetuate the illicit market. Local governments will be permitted to adopt retail licensing restrictions stronger than the state law.” (p.19.)***

This is not accurate. This limitation about market development only applies to the “excessive concentration” factor. Licenses can also be denied or limited for a number of reasons other than excessive concentration—to prevent monopolization, risk of exposure to minors, violation of environmental laws, and perpetuation of an illegal market in or out of state. (Proposed B&P § 26051.) Preventing an illegal market out of state allows for the denial in order to prevent over production or oversupply. Local governments can also ban businesses entirely. (*Id.* at § 26200.)

***“Prevention of marijuana use for underage persons is an important public health goal. Good public health practice, based on provisions for tobacco retailers, would prohibit marijuana retail stores within 1,000 feet of schools and parks. There would be requirements against issuing new licenses in areas that already have a significant number of retail outlets, which would not be contingent upon whether or not such limitation impeded market growth. Retail marijuana businesses would be prohibited from selling marijuana through vending machines or self-service displays, using coupons including digital coupons, promotions, discounts, sale of flavored products (that largely appeal to children), and other offers that would encourage underage initiation and frequent use, as well as impulse buys.” (p. 19.)***

This is not accurate with respect to AUMA. The language does not just say to impede market growth. Rather it is tied to allowing the development of a legal market until we can get rid of the illicit market. So the agency can’t restrict on that basis and allow an illegal market to thrive. However, it is not restrained so as to allow the legal market to grow as big as possible, but rather to simply develop enough to displace an 80 year old, thriving illegal market.

***“Furthermore, it will be legal to sell marijuana in ways that will increase underage persons’ access and appeal, through vending machines, self-service displays, and coupons, and through nontraditional sales, such as the internet, mail order, text messaging, and social media.” (p.20.)***

Not accurate. Proposed B&P § 26140 in AUMA does not allow for the sale or transfer of any marijuana or products unless the purchaser presents a valid identification card showing his or her legal age. An ID card can’t be presented through most of these ways, thus the sale would not be valid. Additionally, person under 21 years of age are not allowed on the premises so would not have access to a vending machine.

***“It is likely that marijuana retail density will have the same impact. There are also no provisions that will require new marijuana retailers be located a minimum distance from other retail stores or that will limit the number of marijuana retailers in a specific geographic unit (i.e., county, city, town).” (p.20.)***

Not true, as the language allowing for denial of a license for excessive concentration specifically addresses this. (Proposed B&P § 26051.)