



**POLICY
REPORT**

THE 2016 CALIFORNIA MARIJUANA INITIATIVE AND YOUTH: Lessons from Alcohol Policy

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I. Introduction

The California initiative entitled the “Control, Regulate and Tax Adult Use of Marijuana Act (AUMA)” would legalize nonmedical use of marijuana and has qualified for California’s November 2016 ballot as Proposition 64.¹ Its 62-page legal text establishes a complex statutory structure for regulating and taxing a new legal marijuana industry.

The proponents make two critical arguments in support of the initiative:

1. It protects public health and safety generally and potential risks to children and youth in particular; and
2. It includes provisions to protect small- and medium-size businesses and deter the monopolization of the market by a small number of large for-profit corporations, as has occurred in the alcohol and tobacco industries.²

These two claims are linked. As has been demonstrated in the experience with alcohol and tobacco, large corporations selling potentially addictive products have the resources and political clout to engage in aggressive marketing practices that increase profits but put young people, particularly adolescents, at risk for drug-related problems.^{3,4}

Protecting youth should be a critical goal for any marijuana legalization effort, including AUMA. As discussed below, marijuana poses heightened risks to young people up to the age of 25.

This report examines these two linked claims, made on behalf of the AUMA initiative, through a detailed analysis of its legal provisions, drawing from the experience and research findings from the alcohol policy field. Its purpose is to educate voters, policymakers, and the public regarding the actual provisions of the initiative and their likely impact on young people, going beyond the political slogans and sound bites both for and against the initiative that are likely to dominate the campaign.

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II. Does the AUMA Initiative include strict safeguards to protect young people?

Young people up to the age of 25 face heightened risks of harm associated with marijuana use, including:

- Impaired verbal, cognitive, and attention functioning;
- Delayed brain development;
- Poor school performance;
- Heightened risk of mental illness;
- Impaired ability to operate motor vehicles; and
- Potential for addiction over time.^{5,6}

Perhaps most troubling is brain research that suggests regular marijuana use during adolescence may result in long-term, impaired neural connectivity in several areas of the brain, including the hippocampus, a critical region of the brain associated with learning and memory.^{5,6}

ALCOHOL POLICY STRATEGIES FOR REDUCING UNDERAGE DRINKING AND THEIR APPLICABILITY TO MARIJUANA LEGALIZATION

Although distinct, alcohol and marijuana share many characteristics regarding their impact on adolescents. Both are intoxicating substances that can have potential adverse impacts on brain development and school performance, may impair driving, and may lead to addiction, particularly when used in combination.^{5,6,7} Importantly, these adverse consequences can be reduced by delaying initiation – the longer young people wait to begin using alcohol or marijuana, the less likely they will experience subsequent health and safety problems. Delaying initiation is therefore a shared, critical prevention priority.^{6,7}

AUMA proponents acknowledge marijuana’s potential harms to young people and claim that these risks are adequately addressed in the initiative’s provisions. Its Findings and Declarations section states: “By legalizing marijuana, the [Initiative] will ... move marijuana purchases into a legal structure with strict safeguards against children accessing it.”⁸ Dr. Donald Lyman, former division chief for preventive medicine at the California Department of Public Health is a co-filer and an AUMA spokesperson and proponent. In a recent *Sacramento Bee* guest article entitled: “Recreational Pot Ballot Measure Would Help Protect Children,” he characterizes AUMA as having the strictest child safeguards ever proposed in marijuana legislation.⁹ These measures, he has stated, will make California healthier and better protect our children and are the result of expert review and input.¹⁰ Lieutenant Governor Gavin Newsom, who also supports the initiative, has made similar claims.¹¹

There is now an extensive body of research compiled over the last four decades addressing the regulation of alcoholic beverages, its impact on youth alcohol consumption and problems, and its potential for delaying initiation and preventing adverse effects. The research has been summarized and analyzed in a series of federally sponsored reports conducted by distinct federal agencies and expert committees that include specific policy recommendations for preventing alcohol problems among youth. The reports include:

- National Academy of Sciences/Institute of Medicine, *Reducing Underage Drinking: A Collective Responsibility* – commissioned by the U.S. Congress;¹²

The longer young people wait to begin using alcohol or marijuana, the less likely they will experience subsequent health and safety problems.

- Centers for Disease Control and Prevention (CDC), Community Preventive Services Task Force *Guide to Community Preventive Services: Preventing Excessive Alcohol Consumption*;¹³
- Office of the Surgeon General, *The Surgeon General's Call to Action to Prevent and Reduce Underage Drinking*;¹⁴
- National Institute on Alcohol Abuse and Alcoholism (NIAAA), *Planning Alcohol Interventions Using NIAAA's CollegeAIM Alcohol Intervention Matrix*;¹⁵
- Interagency Coordinating Committee for the Prevention of Underage Drinking (ICCPUD), *Annual Report to Congress on the Prevention and Reduction of Underage Drinking*.⁷

The findings and recommendations compiled in these federally-sponsored reports provide a sound scientific basis for the development of a comprehensive regulatory structure for preventing youth accessibility to alcohol and offer a compelling model for the legal nonmedical marijuana market. Turning to the alcohol policy research field for guidance is appropriate for at least five reasons:

- 1) As discussed above, the parallels between alcohol and marijuana in terms of their status as intoxicating and potentially addictive substances that pose particular harms to young people;
- 2) The lack of comparable research that applies specifically to marijuana availability and youth in the context of a legal marijuana market (since marijuana legalization is a relatively new phenomenon);
- 3) The depth and comprehensiveness of the research addressing underage drinking prevention;
- 4) The fact that legalization proponents frequently cite alcohol regulation as an appropriate model to apply to marijuana;¹⁶ and
- 5) The fact that AUMA would establish a corporate marijuana industry that is likely to rely on marketing strategies similar to those used by the alcohol industry.

The findings and recommendations compiled in these federally-sponsored reports provide a sound scientific basis for the development of a comprehensive regulatory structure...

The five federal reports provide best practices recommendations for reducing and preventing underage drinking and associated problems. These recommendations can be used to assess the validity of the AUMA campaign's assertion that its proposal adheres to a high standard for protecting youth from the harms associated with marijuana use. Table 1 lists 15 of the most important policy recommendations from the reports. They have been selected based on the reports' assessment of their scientific foundation and likely impact on youth alcohol use and problems. The policies are divided into five categories: social availability, commercial availability, pricing, motor vehicle operation, and marketing. Policies not applicable to marijuana policy are excluded (e.g., keg registration). A three-point classification is used to determine the extent to which AUMA would adopt the policy for marijuana were it enacted:

- Yes:** The initiative adheres to the best practice to a substantial degree as recommended by at least one of the federal reports.
- Partial:** The initiative adopts an aspect of the best practice gaining a significant portion of the benefits associated with it.
- No:** The initiative does not adopt the best practice or adopts an aspect of the best practice that is unlikely to produce significant benefits associated with it.

For comparative purposes, California law is also analyzed to determine the extent to which each policy is adopted for alcoholic beverages. Appendix A provides a description of each policy and the basis for the rating assessment applied to the AUMA Initiative.

BEST PRACTICE RECOMMENDATIONS

Policy Category	Policy	California Alcohol Policy	Proposed AUMA Policy
Social Availability	1. Establish a 21-year age limit for furnishing, possessing or purchasing	Yes	Yes
	2. Prohibit hosting parties where marijuana is used by minors	No	No
	3. Hold social hosts civilly liable for providing marijuana to minors in home settings	Partial	No
Commercial Availability	4. Prohibit commercial furnishing or sale to those under 21 years of age	Yes	Yes
	5. Provide strict enforcement of the 21-year age limit as it applies to commercial marijuana providers	Partial	Partial
	6. Impose strict license sanctions on retail marijuana businesses that provide marijuana to underage youth without regard to retailer intent	Yes	Partial
	7. Prohibit use of false identification to obtain marijuana, with incentives for retailers	Yes	No
	8. Mandate server-seller training	Partial	No
	9. Restrict retail outlet density	Partial	Partial
	10. Institute commercial civil liability	Partial	No
	11. Impose home delivery restrictions	No	No
Pricing	12. Impose high tax rates that increase over time	No	Partial
	13. Prohibit price promotions	No	No
Motor Vehicles	14. Adopt zero tolerance laws for youth driving	Yes	No
Marketing	15. Restrict advertising on electronic media to programming with 15% or less youth audiences	No	No
		TOTAL: Yes: 5 Partial: 5 No: 5	TOTAL: Yes: 2 Partial: 4 No: 9

See Appendix A for details.

RESULTS

As shown in Table 1, the AUMA Initiative would adopt two of the 15 best practices identified through the review of alcohol policy research findings: 21-year minimum age for possession and purchasing, and a 21-year age for furnishing. It would partially adopt another four of the policies: strict enforcement; license sanctions; retail outlet density; and marijuana tax rates. It fails to adopt the remaining nine best practices.

California alcohol law adheres to five of the best practices: 21-year minimum age for possession and purchasing; 21-year age for furnishing; strict license sanctions; prohibit false identification; and adopt zero tolerance laws for youth driving.⁷ California also partially adheres to five additional best practices: social host liability; strict enforcement; server-seller training; outlet density; and commercial host liability.⁷ It does not adopt the remaining five best practices.

III. Does the AUMA Initiative deter the monopolization of the market by a small number of large for-profit corporations, as has occurred in the alcohol and tobacco industries?

During the 80 years following the repeal of alcohol prohibition, the alcohol producing industry has consolidated into a small number of transnational companies that dominate the U.S. and international market, generating billions of dollars in profits.^{3,17,18} For example, two foreign companies (Anheuser Busch/InBev and Miller Coors) now control approximately 80% of the U.S. beer market and five multinational companies dominate the distilled spirits market.¹⁷ A similar consolidation has occurred in the wholesale tier of the alcohol market.¹⁹ Mergers and acquisitions explain most of the growth of the largest firms. The economies of scale fuel this trend toward monopolization – as with many other industries, increasing the size of a firm through mergers, acquisitions and internal growth reduces costs, limits competition, and increases profits.^{17,19} The alcohol industry’s consolidation has occurred despite various efforts by federal and state governments to protect small businesses.

Promoting small business and restricting monopolization serves a variety of public health, safety, social, economic, environmental and cultural agendas, most of which fall beyond the scope of this analysis. The focus here is on the link between monopolization in the marijuana market and risks to young people. Experience in the alcohol market points to three key reasons to prevent consolidation in the industry:

- 1) Large companies can engage in aggressive mass marketing practices on a scale not available to smaller firms – e.g., national and statewide media campaigns, social media marketing, product placement, price manipulation, product branding etc. They can also engage in sophisticated marketing research and targeting of specific demographic groups, including targeting youth.^{17,20}
- 2) For the alcohol market, targeting underage drinkers can fuel profitability. Underage drinkers make up 10% or more of the market.¹² More importantly, early initiators are more likely to become heavy drinkers, and heavy drinkers (binge drinkers and alcoholics) dominate retail sales, fueling industry growth.^{3,7} Large firms have both the resources and motivation to engage in youth targeting to maintain and expand sales. The marijuana market is likely to experience this same dynamic.
- 3) Large alcohol firms wield enormous political and economic power. Particularly at the state and federal level, they dominate legislative agendas, protecting their economic interests, often at the expense of public health and safety goals. The fact that states have not adopted many of the best practices for preventing youth drinking discussed in Section 1 can be traced to the opposition of the alcohol industry.^{3,17}

In short, a major lesson from alcohol policy is that the emergence of a for-profit marijuana industry dominated by a small number of large multinational firms is likely to undermine the adoption and maintenance of effective underage prevention strategies.

Avoiding monopolization in the legal marijuana market is one of AUMA’s stated goals. Its Findings and Declarations section states:

“[It] ensures the nonmedical marijuana industry in California will be built around small and medium sized businesses by prohibiting large-scale cultivation licenses for the first five years. [It] also protects consumers and small businesses by imposing strict anti-monopoly restrictions for businesses that participate in the nonmedical marijuana industry.”²¹

The fact that states have not adopted many of the best practices for preventing youth drinking can be traced to the opposition of the alcohol industry.

The proponents have made similar claims. For example, following submission of amendments to the initiative, Dr. Lyman stated: “[The initiative] now includes even more protections for ... small business ... while ensuring strict prohibitions on marketing to kids and monopoly practices.”⁹

ALCOHOL POLICY STRATEGIES FOR DETERRING MONOPOLIZATION AND THEIR APPLICABILITY TO MARIJUANA LEGALIZATION

Drawing from the experience with the alcohol industry as well as from an analysis by the RAND Corporation’s Drug Policy Research Center on marijuana legalization options and strategies for the State of Vermont,^{20,22} two broad, non-exclusive options exist to deter industry consolidation:

- 1) Mandate government-controlled or owned agencies and/or not-for-profit entities (e.g. non-profit organizations or cooperatives) to be engaged in one or more tiers of the industry;
- 2) Allow for-profit companies to engage in the marijuana industry, but restrict their ability to consolidate using regulatory controls.

The first option partially or completely removes for-profit companies from some tiers of the industry. It does this by mandating not-for-profit or government entities (state and/or local) to control or participate in at least some portions of the commercial market. Eighteen states partially adopted this strategy to restrict alcohol industry consolidation and influence by establishing control systems – where the state itself conducts wholesale and/or retail operations.²³ Research has established that this strategy has had substantial public health benefits.²⁴ Most control states have gradually eroded or ended these state operations, turning the business over to private, for-profit firms, often responding to the political pressure from the very firms that stand to benefit from the privatization legislation.²⁵ Washington State permits (but does not mandate) a version of this strategy for the marijuana market. The town of North Bonneville has established a Public Development Authority (PDA) to operate a marijuana retail outlet.²⁶ This option is clearly the most effective strategy for preventing the consolidation of the marijuana industry into a small number of for-profit entities.

The second option establishes a for-profit industry but imposes controls on the size of each business entity at each tier of the industry, restricts the extent to which a single business can operate in different tiers of the industry, and limits business practices that encourage monopolization (typically by reducing the benefits of economies of scale). Many states have developed strategies to restrict alcohol industry monopolization; in general, the controls have eroded over time, often in response to industry lobbying pressure. Nevertheless, the alcohol policy experience provides guidance for identifying policy options for deterring monopolization of the marijuana industry.

Using alcohol policy and the RAND study of marijuana legalization as guides, Table 2 provides a list of nine anti-monopolization regulatory strategies. For each strategy, a rating is provided indicating the extent to which it has been adopted by the AUMA Initiative, using the three-point classification applied to AUMA’s underage drinking claim (see Appendix B for description of each policy and basis for ratings):

Partially or completely removing for-profit companies from some tiers of the industry... is the most effective strategy for preventing the consolidation of the marijuana industry into a small number of for-profit entities.

ANTI-MONOPOLIZATION STRATEGIES

Policy Category	Policy	California Alcohol Policy	Proposed AUMA Policy
Restrictions on type of business	1. Mandate government-controlled or non-profit entities to control or participate in part or all of the market	No	No
	2. Limit the number of licenses that can be held by a single entity	No	No
Restrictions on individual company size	3. Limit amount of cultivation/production permitted per license	No	No
	4. Limit volume permitted by wholesalers per license	No	No
	5. Limit volume permitted by retailers per license	No	No
	6. Prohibit issuance of new licenses or license renewals if the issuance will contribute to monopolization	No	No
	7. Restrict vertical integration by establishing a three-tier regulatory structure (i.e., prohibit licensees in one tier of the industry from obtaining a license in another tier)	Partial	No
Restrictions on monopolist pricing practices	8. Prohibit volume discounts	No	No
	9. Establish and enforce minimum price markups at the wholesaler and retailer level	No	No

See Appendix B for details.

B. RESULTS

The AUMA initiative rejects the first option and clearly envisions a for-profit marijuana industry. In fact, it puts into question the role of non-profit entities. The state licensing agency is charged with investigating the feasibility of creating non-profit retail and distributor license classifications, allowing local governments to issue such licenses on a temporary basis only while the feasibility study is being conducted.²⁷ Entities that are under direct government control, such as PDAs, are not included as possible licensees, although they are not explicitly excluded. PDAs at the local level may not be allowed since, unlike Washington State, state statutory provisions do not exist in California that would grant local governments the authority to establish them.

The extent to which AUMA would control monopolization therefore rests on its adoption of anti-monopolization strategies applied to for-profit companies. None of the remaining eight strategies are adopted. AUMA does allow the licensing authority to deny a new or renewed license if it would contribute to the “maintenance of unlawful

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monopoly power” and has one restriction on vertical integration. However, upon review, it was determined that these provisions are too weak to warrant a partial adoption rating (see Appendix B for details).

AUMA essentially adopts California’s current policies as they relate to the alcohol industry, although California restricts to a limited degree vertical integration. California’s alcohol market is dominated by a small number of large firms, particularly at the producer and wholesaler level.

IV. DISCUSSION

The AUMA initiative adopts only a small fraction of the best practices identified in the alcohol policy field for reducing youth marijuana availability and adopts none of the best practices identified for avoiding monopolization of the marijuana industry. It does partially adopt several best practices provisions, but, as documented in Appendices A and B, the relevant provisions are unlikely to have much effect in reaching the stated goals and claims of the initiative and its proponents. If AUMA is enacted, Californians should anticipate increased youth availability of marijuana, aggressive marketing by marijuana companies that put young people at risk, and a marijuana industry that consolidates into a relatively small number of large, politically powerful, for-profit (and highly profitable) corporations. Based on the experience with alcohol, these trends will likely emerge gradually over time.

Some of AUMA’s proposed policies create an appearance of a meaningful restriction that actually provides no or little benefit. For example, AUMA would allow marijuana advertisers to advertise on broadcast, cable, radio, print and digital communications where at least 28.4% of the audience is reasonably expected to be 21 years of age or older.²⁸ This standard is drawn from the voluntary codes of the alcohol industry.²⁹ As has been documented in the alcohol policy literature, it is ineffective in protecting youth from overexposure to alcohol advertising.^{30,31} A 15% standard, applicable to tobacco advertising placement, is the best practice standard recommended by the Institute of Medicine’s report on underage drinking commissioned by the United States Congress.¹² Research has shown that this more restrictive threshold does not have a major effect on the industry’s ability to reach adult consumers.³⁰ The vigorous opposition of the alcohol industry to the 15% standard puts into question its stated commitment to avoid marketing to youth.

In several cases, AUMA appears to adopt a best practice but substantially undermines it by including requirements or exceptions that are likely to expand the youth market and promote market consolidation. AUMA’s 21-year-old age limit, for example, is a best practice. However, AUMA does not include complementary provisions to promote compliance with the age limit by retailers, social hosts, and young people themselves. Social host ordinances, commercial and social host liability provisions, mandatory server/seller training, zero tolerance laws for young drivers, and other best practices are not included. Enforcement of the age limit is further hampered by the lack of adequate resources for compliance checks and the strict evidentiary standard required for imposing license sanctions on retailers who illegally provide marijuana to underage youth (see Appendix A for further discussion). Experience from alcohol policy demonstrates that these complementary strategies are critical components of a comprehensive approach to preventing underage availability.^{12,14,15,32}

AUMA not only largely ignores the best practices standards found in the reviews of evidence-based strategies and documented in numerous federal reports. As shown in Table 1, it also fails to adopt most of the modest restrictions applicable to alcoholic beverages in California, restrictions that have been only marginally

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successful in limiting youth alcohol availability.³³ This failure is noteworthy given that the regulatory structure proposed in AUMA and being implemented in California for medical marijuana is modeled after California's alcohol control system. The newly created Bureau of Medical Marijuana Regulation will be the primary regulatory agency for legal marijuana if AUMA is enacted. Its new director, Lori Ajax, is a former chief deputy director of the California Alcoholic Beverage Control Department and has stated that her experience with alcohol control will guide the new Bureau.³⁴

The lack of controls on industry consolidation is particularly striking. Proponents argue that the provision that imposes a five-year delay on the issuance of cultivation licenses that permit unlimited cultivation areas will protect small and medium size businesses.^{21,35} Yet licenses for cultivation sites of up to one acre for outdoor and 22,000 square feet for indoor sites will be immediately available, and a single business entity can obtain multiple cultivation licenses which can be adjacent to each other.^{36,37} A substantial concentration of the cultivation tier is likely to be initiated in these first five years, so that the lifting of the restriction on unlimited cultivation sites will likely have little long-term effect. The retail and wholesale tiers of the industry would have no restrictions at all on the size of operations and the number of licenses a single operator can obtain.

AUMA proponents point to the various provisions that give regulators the discretion to impose restrictions on license issuance and certain predatory business practices. However, as documented in Appendix B, the provisions are unlikely to have much effect. Instead of imposing minimum price markups and prohibiting volume discounting, for example, AUMA essentially duplicates California statutory provisions related to price fixing that apply to all consumer product companies.³⁸ These laws have had little effect on the consolidation of the alcohol, tobacco and other industries.

The best practices and lessons learned from alcohol policy regarding youth drinking are well researched and documented in numerous high-profile government reports and academic research journals. Unfortunately, AUMA has largely ignored these valuable and readily available resources for crafting a regulatory structure for marijuana legalization that would protect young people from harm.

The failure to adopt the underage prevention policies identified here presents only a partial picture of AUMA's underage provisions. This analysis includes only those policies that have both strong scientific evidence of effectiveness and have been compiled and recommended by at least one of five federally sponsored research reports (and in most cases is recommended by at least three and often all five of the reports – see Appendix A). It thus omits policies that may raise additional concerns, particularly regarding marketing to youth – a policy arena largely ignored by the federally sponsored studies.

For example, AUMA prohibits advertising and marketing that is “intended to encourage persons under the age of 21 years to consume marijuana.”³⁹ This mirrors a California statute applicable to alcoholic beverages, which is largely unenforceable because proving the intent of the advertiser is so difficult.^{40,41} A best practice standard used in many other states does not require this “intent” element of proof.⁴¹ Experience from tobacco policy raises additional concerns about AUMA's treatment of youth and monopoly prevention, addressed in a report from the University of California at San Francisco's Center for Tobacco Control Research and Education.⁴²

The best practices and lessons learned from alcohol policy regarding youth drinking are well researched and documented in numerous high-profile government reports and academic research journals.

A major lesson from alcohol policy is the importance of a robust local regulatory structure to address industry marketing practices and reduce underage drinking problems, particularly when state controls are weak.⁴³ For example, in California, many cities and counties have enacted controls on alcohol outlet density, social host ordinances, and mandatory Responsible Beverage Service programs, among other prevention-oriented policies.⁴⁴

City and county governments could similarly play an important role in reducing the adverse impacts of AUMA should it be enacted. AUMA explicitly allows local governments to adopt stricter regulatory standards (potentially including a ban on legal, commercially-grown, marijuana). It also allows counties (but not cities) to impose additional taxes. Many of the best practice measures identified here could serve as a guide for local governments to develop comprehensive local regulatory structures that better protect youth from harm caused by marijuana and deter industry consolidation.

A major lesson from alcohol policy is the importance of a robust local regulatory structure to address industry marketing practices and reduce underage drinking problems, particularly when state controls are weak.



Appendix A

BEST PRACTICES FOR PROTECTING YOUTH FROM HARM

A. Social Availability

1. Establish a 21-year age limit for furnishing, possessing and purchasing marijuana.

Best Practice Standard ^{8,12,13,14,15}

There is an extensive body of research showing that a 21-year age limit for furnishing, possessing and purchasing marijuana provides substantial health and safety benefits for underage youth. Possible exceptions may apply for parents, guardians, and spouses.^{10,11,12,14}

AUMA Proposal: Substantial Adoption.

Discussion

The AUMA Initiative adopts a 21-year age limit.⁴⁵

2. Prohibit hosting parties where marijuana is used by minors.

Best Practice Standard ^{8,12,14}

Laws concerning hosting underage parties impose civil and criminal penalties against individuals (social hosts) responsible for underage drinking events on property they own, lease, or otherwise control. Underage drinking parties are particularly high-risk settings for alcohol-related problems, including sexual assault, other forms of violence, and drinking while driving.⁸ Similar adverse consequences can be anticipated for underage parties with marijuana.

AUMA Proposal: Not adopted.

Discussion

The AUMA Initiative does not include a hosting underage marijuana party provision.

3. Adopt Social Host Civil Liability

Best Practice Standard ^{8,12,15}

In states that recognize this form of civil liability, private parties may sue non-commercial furnishers of alcohol to underage youth for any resulting injuries. (This distinguishes them from underage party laws, which impose state-sanctioned penalties on the furnishers.) Many states allow the underage youth to recover damages as well as third parties.⁸ Best practice imposes a negligence standard without damage caps or other additional evidentiary requirements.⁸ Research has shown that social host liability reduces alcohol-related motor vehicle crashes as well as other alcohol-related problems.⁸ A similar type of civil liability for non-commercial furnishing of marijuana to underage youth can be expected to have positive public health and safety results.

AUMA Proposal: Not adopted.

Discussion

The AUMA Initiative does not include a social host liability provision.

B. Commercial Availability

4. Prohibit commercial furnishing or sale to those under 21-years of age

Best Practice Standard ^{8,12,1}

There is an extensive body of research showing that a 21-year age limit for commercial furnishing and selling provides substantial health and safety benefits for underage youth.

AUMA Proposal: Substantial Adoption.

Discussion

The AUMA Initiative adopts a 21-year age limit for commercial furnishing and sale.⁴⁶

5. Provide strict enforcement of the 21-year age limit as it applies to commercial marijuana providers.

Best Practice Standard^{8,12,13,14,15}

Strict enforcement should include: (1) compliance checks, which permit law enforcement to use persons under the age of 21 to attempt to obtain marijuana from retail establishments; (2) a requirement that compliance checks are conducted on a routine and frequent basis; and (3) adequate funding to local and state enforcement agencies for the compliance checks.

AUMA Proposal: Partial Adoption.

Discussion

The AUMA Initiative would authorize compliance checks but fails to meet the remaining two elements of the best practice standard.⁴⁷ It has no requirements regarding the actual conduct of compliance checks. AUMA has only limited funding for local law enforcement that is not earmarked for compliance checks.⁴⁸ The experience with alcohol policy suggests that local law enforcement agencies would be primarily responsible for conducting the checks, and they would lack the resources to do so effectively.

6. Impose strict license sanctions on retail marijuana businesses that provide marijuana to underage youth without regard to retailer intent.

Best Practice Standard^{8,12,13,15}

Enforcement of commercial underage furnishing laws should be accompanied with strict civil penalties that can lead to license suspensions and revocations. First, penalties should be imposed without reference to the retailer's intent or actual knowledge of the customer's age – evidence of the transfer occurred should be sufficient.⁸ Second, an affirmative defense should be included for retailers who use reasonable care to inspect an apparently valid government ID. Third, all forms of transfers should be included, not just sales. Relying on criminal penalties for violations is a substantially weaker standard because of the high burden of proof and more complex, lengthy legal process involved. District attorneys are much less likely to act on alleged violations than licensing authorities.

AUMA Proposal: Partial Adoption.

Discussion

The initiative includes two sections related to retailer penalties that are specific to violations for providing marijuana to underage youth. The first states that the “intentional and knowing sale of marijuana by a licensee to a person under the legal age to purchase or possess” is grounds for disciplinary action.⁴⁹ The second states it is illegal for any licensee to “sell” marijuana to underage persons unless the underage person presents documentation which “reasonably appears” to be a valid government identification documenting his/her age.⁵⁰ “Sale” requires some form of consideration or payment, so gifts and free transfers to minors made by licensees cannot be a basis for imposing disciplinary action.⁵¹

The first provision imposes a high, subjective burden of proof often associated with criminal prosecution for imposing “disciplinary action” (which apparently refers to license sanctions and fines). The licensing authority must show that the retailer both intentionally and knowingly sold to the underage youth. Such a standard will substantially reduce the likelihood that any licensing sanction will be imposed. The second provision does include the best practice exception regarding inspection of governmental identification. However, it apparently does not apply to the license sanctioning process, which is governed by the first provision. The identification document provision is relevant to determining whether a criminal sanction should be imposed but not a license sanction. As written, the initiative appears to make it easier to impose a criminal penalty than a license sanction.

7. Prohibit use of false identification to obtain marijuana with incentives for retailers to use ID scanners or other technology.

Best Practice Standard ^{8,12,14}

Retailers are expected to rely on government-issued identification (e.g., driver's license, non-driver identification card, passport, and military identification) to determine whether a customer meets the 21-year minimum age requirement. Many underage youth attempt to circumvent these safeguards by using an apparently valid ID that falsely states their age as 21 or over. False identification laws serve to protect retailers by: (1) imposing sanctions on youth that use false identification and others who produce them; and (2) providing incentives to retailers to promote ID checking, including incentives for using ID scanners or other technology to determine their validity (e.g., providing a defense to a sales to minor violation accusation).

AUMA Proposal: Not adopted.

Discussion

The AUMA Initiative does not include a false identification provision.

8. Mandate Responsible Beverage Service programs.

Best Practice Standard ^{8,12,14,15}

Responsible Beverage Service (RBS) programs train retail managers and servers how to maintain a safe retail environment and avoid furnishing or sales to minors. The programs have at a minimum two key components: (1) Mandatory server and seller trainings that present methods for checking age identification and intervention techniques; and (2) Mandatory manager trainings that identify retail policies designed to deter furnishing to minors and methods for insuring that the policies are implemented by staff.

AUMA Proposal: Not adopted.

Discussion

The AUMA Initiative does not contain an RBS provision.

9. Restrict retail outlet density.

Best Practice Standard ^{13,15}

Numerous research studies have documented a link between the high density of alcohol retail outlets and alcohol-related problems, including youth violence and drinking and driving. In general, clustering of alcohol outlets in relatively small geographic areas is most likely to lead to problems. A best practice standard includes: (1) Restrictions on the number of retail outlets within a small geographic region; (2) Distance requirements between retail outlets (e.g., 500 feet); (3) Distance requirements between alcohol outlets and youth-sensitive locations, including schools, parks, and other youth-sensitive locations; and (4) Mandatory application with no or minimal exceptions.

AUMA Proposal: Partial adoption.

Discussion:

AUMA allows the licensing authority to consider “excessive concentration” of retail outlets in a city, county, or both as a factor in determining whether to issue a new license. Excessive concentration occurs when:

“... the premises for a retail license ... is located in an area where ... the ratio of a licensee to population in the census tract or census division in which the applicant premises are located exceeds the ratio of licensees to population in the county in which the applicant premises are located, unless denial of the application would unduly limit the development of the legal market so as to perpetuate the illegal market for marijuana”⁵²

The initiative would prohibit new licenses from being located within a 600-foot radius of a school that includes any grades kindergarten through 12th grade, day care center, or youth center.⁵³ It also provides that alcohol and tobacco retail licensees are prohibited from obtaining a marijuana retail license.⁵⁴

The excessive concentration provision will have little effect on retail outlet density and fails to meet at least four aspects of the best practice standard: (1) It is based on population ratios instead of geographic distances; (2) There are no numerical limits on the number of outlets in a given region; (3) A vague exception is included that is likely to discourage its application; and (4) The provision is not mandatory but is just one of several factors to be considered in the licensing decision. The distance requirement near schools and youth-sensitive locations meets part of the best practices standard, although it does not include all youth-sensitive locations. Prohibiting alcohol and tobacco licensees from obtaining a marijuana retail license will also have a beneficial effect, since many of these are convenience stores and supermarkets.

10. Establish retailer civil (dram shop) liability.

Best Practice Standard ^{8,12,13,15}

In states that recognize this form of civil liability, retailers who furnish alcohol to underage youth may be sued for any resulting injuries. Many states allow the underage youth to recover damages as well as third parties. Best practice imposes a negligence standard without damage caps or other additional evidentiary requirements. Research has shown that dram shop liability reduces alcohol-related motor vehicle crashes as well as other alcohol-related problems. A similar type of civil liability for commercial furnishing of marijuana to underage youth can be expected to have similar positive public health and safety results.

AUMA Proposal: Not adopted.

Discussion

The AUMA Initiative does not contain a retailer civil liability provision.

11. Impose home delivery restrictions

Best Practice Standard^{8,12}

Home delivery restrictions prohibit or limit deliveries by retailers to customers who are not present at the retail outlet. Off-site deliveries make it easier for underage youth to subvert minimum age purchase requirements through deception. Delivery persons may have less incentive to check age identification and are less likely to use age verification technology. Many states ban alcohol deliveries, and some states impose special requirements to deter underage sales.⁸ Best practice is to either ban marijuana deliveries or impose labeling, record keeping and age identification requirements.

AUMA Proposal: Not adopted.

Discussion

AUMA specifically allows deliveries with no restrictions pertaining to age identification or underage purchase.⁵⁵

C. Pricing

12. Impose relatively high marijuana taxes.

Best Practice Standard ^{8,12,13,15}

Imposing relatively high alcohol taxes has been shown to be an effective strategy for reducing youth alcohol consumption and related problems and is recommended by numerous federally sponsored reports. Translating this research finding to marijuana policy is complicated because of the existence

of a robust black market. Taxes that are set too high will make it more difficult to eradicate illegal sales and establish a stable, regulated commercial market. Flexibility over time is important for three reasons: (1) As the black market is controlled, taxes can be raised; (2) Tax rates that are based on volume rather than price are eroded over time due to inflation; and (3) As a new market, considerable uncertainty exists at the outset concerning what is the optimal tax in terms of its prevention goals.^{20,22}

Taking these factors into consideration, a best practice standard for initial marijuana tax would include: (1) A relatively high initial tax rate that has as its explicit purpose to promote public health goals; (2) If a volume tax is imposed, an automatic, mandated index to inflation; and (3) A mandated annual review to determine if the tax rate should be increased to promote public health goals without promoting the black market.^{20,22}

AUMA Proposal: Partial adoption.

Discussion

AUMA would impose the following taxes on marijuana: (1) 15% ad valorem tax on gross receipts for all retail sales; (2) \$9.25 cultivation tax per dry-weight ounce of marijuana flowers; and (3) \$2.75 cultivation tax per dry-weight ounce of marijuana leaves.⁵⁶ The taxes are in addition to various regulatory fees imposed at all levels of the industry. The regulating agency may impose equivalent cultivation taxes on other categories of harvested marijuana. The cultivation taxes are indexed to inflation;⁵⁷ the tax rates are set and the legislature is not authorized to increase them without a two-thirds majority vote.⁵⁸ Regulatory agencies also lack the authority to increase the tax rates.

The initial tax rates appear to be roughly equivalent to those imposed in Colorado, Oregon, and Washington, although comparison is difficult since these three states rely on ad valorem tax rates exclusively. AUMA also includes an inflation adjustment for its volume tax. However, the third component of the best practice standard is not met. Instead of mandating an annual public health-oriented review and explicitly permitting a gradual increase in taxes as the black market is controlled, AUMA locks in the tax rates, and they cannot be increased by the legislature without a two-thirds majority vote and cannot be adjusted by the regulatory agencies.

13. Prohibit price promotions.

Best Practice Standard ^{8,13,14,15}

Retailer price promotions include many types of pricing practices that promote consumption – free samples, volume discounts (e.g., two-for-ones), and discount prices on certain hours of the day or days of the week. They are particularly popular with young people, including college students, who typically have limited financial resources. Many medical marijuana dispensaries are using these practices. Best practice standard prohibits all forms of retail price promotions.

AUMA Proposal: Not adopted.

Discussion

AUMA places no limitations on retailer price promotion practices.

D. Motor Vehicles

14. Establish zero tolerance laws for youth driving.

Best Practice Standard ^{8,13,14,15}

In alcohol policy, per se Blood Alcohol Levels (BALs) have been established for both adults (.08 BAL) and youth (.02, .01 or .00 BAL, often referred to as “zero tolerance”). A per se BAL statute stipulates that if the operator has a BAL level at or above the per se limit, a violation has occurred without regard to other evidence of impairment or sobriety (e.g., how well or poorly the individual is driving). In other words, exceeding the BAL limit established in a per se statute is itself a violation. Owing to differences between young people and adults (e.g., body mass, physiological development, driving experience), young people’s ability to safely operate a motor vehicle is impaired at a lower BAL than for adults. All 50 states have

therefore adopted zero tolerance laws – an underage youth found to have more than trace amounts of alcohol in his/her bloodstream commits a violation and is subject to license suspension and fines.²³ A best practice standard includes both a very low BAL level for young people and the per se feature.

Problems arise when translating the best practice standard from alcohol policy to marijuana policy because marijuana remains in the bloodstream for longer periods and its presence may not necessarily translate to unsafe, impaired driving. Research is now in progress to establish a scientific per se standard.⁵⁹ Washington has established a per se blood level limit for marijuana of 5 nanograms delta 9-tetrahydrocannabinol per milliliter in whole blood,⁶⁰ although recent research puts into question whether this is an accurate measure for determining impairment.⁶¹ Colorado applies a rebuttable presumption of impairment (but not per se) for the same blood level – i.e., a driver found to have this level of marijuana in his/her bloodstream is presumed to be impaired, but the driver can rebut the presumption by providing evidence of non-impairment.⁶² A basic tenet common to both intoxicating substances is that young people are more at risk at lower doses than adults and should therefore be held to a stricter limit. Until more definitive research is available, a best practice standard establishes a rebuttable presumption of impairment and a stricter standard for underage youth than adults.

AUMA Proposal: Not adopted.

Discussion

AUMA does not include a rebuttable presumption of impairment, relying instead on California's general ban against driving under the influence of any drug, a difficult statute to enforce and prosecute.⁶³ It provides funding to the California Department of Motor Vehicles to study the issue but does not differentiate between adult and underage drivers.⁶⁴

E. Marketing

15. Restrict advertising on electronic media to programming with 15% or less youth audiences.

Best Practice Standard¹²

There is now a substantial body of scientific research establishing a link between youth exposure to alcohol marketing and youth alcohol consumption and early youth initiation.^{65, 66} One strategy for reducing youth exposure is to restrict alcohol advertising on electronic media to programming popular primarily with adults, avoiding youth-oriented programming. A 15% standard (i.e., advertising permitted only on programming that draws 15% or less underage youth) is applicable to tobacco advertising placement and is recommended as a best practice standard by the National Research Council/Institute of Medicine's report on underage drinking commissioned by the United State Congress.¹² Research has shown that this more restrictive threshold does not have a major effect on the industry's ability to reach adult consumers.³⁰

AUMA Proposal: Not adopted.

Discussion

AUMA adopts a 28.4% standard, which is drawn from the voluntary codes of the alcohol industry.²⁹ As has been well documented in the alcohol policy literature, it is ineffective in protecting youth for overexposure to alcohol advertising.^{30,31}

Appendix B

BEST PRACTICES FOR DETERRING MONOPOLIZATION OF THE LEGAL MARIJUANA MARKET

A. Restrictions on Type of Business

1. Mandate government-controlled or non-profit entities to control or participate in part or all of the market.

Best Practice Standard

Partly or completely eliminating for-profit entities from the legal marijuana market provides a best practice standard for reducing monopolization. California's medical marijuana market has been operating on this basis since its inception in 1996 – all entities involved in the market have been required to operate on a not-for-profit basis.⁶⁷ Recent state legislation, now being implemented, will allow for-profit companies to enter the market.

Eighteen states partially adopted this strategy to restrict alcohol industry consolidation and influence by establishing control systems – where the state itself conducts wholesale and/or retail operations.²³ Research has established that this strategy has had substantial public health benefits.²⁴ Washington State permits a version of this strategy for the legal marijuana market. The town of North Bonneville has established a Public Development Authority (PDA) to operate a marijuana retail outlet.²⁶

AUMA Proposal: Not adopted.

Discussion

AUMA clearly envisions a for-profit legal marijuana industry. In fact, it includes an impediment to non-profit organizations entering the legal marijuana market. The state licensing agency is charged with investigating the feasibility of creating non-profit retail and distributor license classifications, allowing local governments to issue such licenses on a temporary basis only while the feasibility study is being conducted.²⁷

B. Restrictions on Individual Company Size

2. Limit the number of licenses that can be held by a single entity.

Best Practice Standard

Monopolization in the alcohol market is fueled by allowing a single business entity to obtain multiple licenses at each tier of the industry – retail, wholesale, cultivation, and manufacture (i.e., promoting horizontal integration). Limiting the number of licenses per company will deter consolidation and promote small and medium-size businesses to compete in the market. Standards should be established to determine under what limited circumstances multiple licenses are allowed.

AUMA Proposal: Not adopted.

Discussion

AUMA specifically allows commercial businesses to obtain an unlimited number of licenses.⁶⁸

3-5. Limit the amount of cultivation/production permitted by license; limit the volume permitted by wholesalers and retailers per license.

Best Practice Standard

Limiting the size of individual companies can be accomplished by simply limiting the amount they can cultivate or produce (at the cultivation tier) and the volume of sales at the wholesale and retail tier. A best practice standard involves setting such limits, using guidelines that insure small and medium-size businesses can be viable while adhering to the set limits. This strategy is only effective if the number of licenses per entity is also controlled.

AUMA Proposal: Not adopted.

Discussion

AUMA allows for unlimited volume of production and sales at each tier of the industry, imposing a five-year delay before licenses to cultivate more than one acre for outdoor and 22,000 square feet for indoor operations.^{35,36,37} The delay will at best slow the monopolization process, particularly since cultivation businesses can obtain multiple licenses to expand cultivation beyond the initial limits.

6. Prohibit issuance of new licenses or license transfers if the issuance will contribute to monopolization.

Best Practice Standard

Another method for deterring monopolization is to require the licensing authority to apply specific guidelines in determining whether the granting or renewing of a new or existing license will result in undue concentration of the market. A best practice standard would include clearly defined criteria for making this determination. Without specific criteria, licensing decisions are likely to be subject to litigation and denials will be less likely to occur.

AUMA Proposal: Not adopted.

Discussion

AUMA lists a series of factors that the licensing authority shall consider in determining whether to grant or renew a license. One of the factors listed is whether the proposed license will “allow unreasonable restraints on competition by creation or maintenance of unlawful monopoly power.”⁶⁹ A “not adopted” rating was applied for the following three reasons:

It fails to include any specific criteria for how this restriction is to be applied;

It fails to define “unlawful monopoly power”, which makes its application difficult or impossible; and

A companion factor involves a determination as to whether the license issuance or renewal will perpetuate the presence of an illegal market either within or outside California, a criterion that is likely to trump the anti-monopoly provision.

7. Restrict vertical integration by establishing a three-tier regulatory structure.

Best Practice Standard

Strategies 2-6 address horizontal integration and monopolization – dominance by a small number of large firms within a specific tier of the industry. Another form of monopolization involves vertical integration, where large firms gain market dominance by engaging across multiple tiers. Vertical integration has been a major issue in alcohol policy, and most states impose at least some restrictions, often referred to as “tied house laws.”⁷⁰ Maintaining independent tiers restricts the ability of companies in one tier from dictating the business practices of companies in other tiers, thereby reducing the market power of individual firms.⁷⁰ A best practice standard is to maintain a strict three-tier industry with a possible exception for micro-businesses.

AUMA Proposal: Not adopted.

Discussion

AUMA specifically allows vertical integration, with one exception: a license for unlimited cultivation (more than one acre for outdoor and 22,000 square feet for indoor) cannot hold a distributor license (but may hold an unlimited number of retail licenses).⁷¹ This exception was determined to be so limited as to preclude a “partial adoption” rating: a distributor that is contracted by a large cultivator to deliver marijuana to the cultivator’s retail outlets is likely to be highly dependent on the cultivator and unable to act independently.

C. Restrictions on Monopolist Pricing Practices

8. Prohibit volume discounts.

Best Practice Standard

Volume discounting represents a distributor practice that encourages market consolidation – distributors reward retailers who make large orders and penalize small retail businesses. This in turn makes it more difficult for small retailers to compete with large, discount retail operations. Many states restrict distributors of alcoholic beverages from engaging in this practice.⁸ A best practice standard bans volume discounts.

AUMA Proposal: Not adopted

Discussion

AUMA prohibits certain business practices that may lessen competition including volume discounting. However, the prohibition requires evidence that: (1) The volume discounting is an agreement with the purchaser that the purchaser will, as a condition of the sale, not deal in the goods and services of competitors; and (2) The effect of the discount sale may substantially lessen competition or tend to create a monopoly.⁷² AUMA also prohibits sale of marijuana at less than cost to the vendor but only if evidence is provided that the purpose of the sale is to injure competitors or destroy competition.⁷³ The evidentiary requirements of the two provisions substantially undermine their potential impact, which essentially duplicate California statutory provisions related to price fixing that apply to all consumer product companies.³⁶ AUMA therefore does not add any new restrictions on volume discounting applicable to the marijuana industry that are not already in existence. The existing provisions have had little effect on the consolidation of the three tiers of the alcohol industry.

9. Establish and enforce minimum price markups at the wholesaler and retailer level.

Best Practice Standard

A more aggressive regulatory strategy to reduce monopolist pricing policies is to establish minimum markups (from cost) of retail and wholesale prices. As with volume discounts, pricing products below cost is a marketing practice that benefits large firms at the expense of smaller entities and promotes consolidation. Many states ban or restrict this practice in the alcohol market.⁸ A best practice standard requires minimum price markups on all wholesale and retail transactions of marijuana products.

AUMA Proposal: Not adopted.

Discussion

AUMA includes restrictions on price fixing that essentially duplicate existing California law, as discussed above. It has no provisions involving minimum price markups.

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