

December 3, 2021

**SENT VIA ELECTRONIC MAIL**

Greg Pirie  
Marin County Environmental Health Services  
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[EHSMedicalWaste@MarinCounty.org](mailto:EHSMedicalWaste@MarinCounty.org)

Re: Public Comments on Inmar's Proposed November 16, 2021 Marin County Drug Stewardship Plan

Dear Mr. Pirie:

MED-Project LLC ("MED-Project") submits these public comments on the proposed Drug Stewardship Plan, dated November 16, 2021, that was recently submitted by Inmar to Marin County ("Inmar Proposed November 16, 2021 Plan"). MED-Project's comments are limited because Marin County has failed to provide sufficient time for comment on the Inmar Proposed November 16 Plan, by releasing the plan for comment on November 23, 2021, just before the Thanksgiving holiday weekend, and then mandating comment by December 3, 2021. MED-Project may have identified additional comments with more time to review.

MED-Project develops, implements, and operates stewardship programs for unwanted medicine from households on behalf of approximately 201 parent companies and their 189 affiliates ("Producers"), as defined in Section 7.90.020(Q) of the Marin County Safe Drug Disposal Ordinance ("Ordinance"). MED-Project has substantial, practical, on-the-ground experience implementing unwanted household medicine take-back programs in 16 jurisdictions across the country, including throughout California. MED-Project currently administers the only approved product stewardship plan for unwanted medicine from households in Marin County.

This proposed stewardship plan is the third version of an Inmar drug stewardship plan that has been released for public comment in Marin County. MED-Project continues to have serious concerns with a number of aspects of the Inmar Proposed November 16, 2021 Plan. Most importantly, the Inmar Proposed November 16, 2021 Plan does not adequately describe how the proposed collection system will satisfy the mandatory convenience standards specified in the Ordinance at Section 7.90.080(B)(1). There are also significant omissions and inadequacies in other aspects of the Inmar Proposed November 16, 2021 Plan, which are each described in turn below.

Marin County cannot approve a proposed stewardship plan, like the Inmar Proposed November 16, 2021 Plan, that is legally noncompliant or in conflict with the mandatory requirements imposed under the Ordinance or under other applicable laws or regulations. This is particularly true here, where there is another approved Stewardship Plan that is operating at or above the standards imposed by the Ordinance. Such an act of approval would not only be unreasonable and inconsistent with the objectives of the Ordinance but would also create unfairness and inequities for not only MED-Project, but Marin County residents and Producers as well.

In particular, Marin County cannot provide final approval of the Inmar Proposed November 16, 2021 Plan because, as currently drafted, approval would violate the intent of the Ordinance that alternative Plan Operators must independently meet all requirements of the Ordinance (except for the single system of promotion required by the Ordinance). It would also be inequitable and unreasonable, as it would allow some Producers to save money by participating in a less robust Inmar Proposed November 16, 2021 Plan, while relying on other, equally situated Producers to bear the increased costs of a more robust Plan that provides the bulk of the product stewardship services to Marin County residents. This, in turn, would create

a “race to the bottom” scenario, which would incentivize Producers to switch to a less robust Inmar Proposed November 16, 2021 Plan, thereby reducing the level of product stewardship services provided to Marin County residents. This is clearly inconsistent with the objectives of the Ordinance.

**I. Every Stewardship Plan must independently satisfy the Ordinance’s convenience standard in an equally robust fashion**

**A. The Inmar Proposed November 16, 2021 Plan does not adequately describe how it will meet the Ordinance’s convenience standard**

The Ordinance requires each Stewardship Plan to include a description of how the proposed collection system will provide a “convenient ongoing collection service for all unwanted covered drugs from county residents in compliance with the provisions and requirements in Section 7.90.080 . . . .” Ordinance Section 7.90.050(B). The convenience standards specified in Ordinance Section 7.90.080(B), in turn, require that each plan’s collection system “[p]rovide reasonably convenient and equitable access for all county residents through drop-off sites” by requiring that: (1) the drop-off sites must be geographically distributed throughout the County, (2) there shall be at least 25 drop-off sites located in the County, and (3) if those convenience standards cannot be achieved due to a lack of drop-off sites in certain areas, then those underserved areas must be alternatively served through periodic collection events and/or mail-back services. See Ordinance Section 7.90.080(B)(1). Additionally, the Stewardship Plan must include a list of all participating Collectors and a list of all drop-off sites, and a description of how any mail-back services will be provided. Ordinance Section 7.90.050(B). These are core Ordinance requirements that must apply equally to each Plan and must be met independently by all Plan Operators.

On page 3 of the Inmar Proposed November 16, 2021 Plan, Inmar states that “[p]ursuant to Ordinance §7.90.080(b)(1), Inmar’s goal is to meet the convenient standard of 25 drop off sites. . . .” In discussing how Inmar will meet the Marin County convenience standard, on page 4, Inmar identifies MED-Project sites and “combined coverage” charts that it includes in its Appendix E. Inmar cannot rely on a fabricated “combined county coverage” standard that includes MED-Project drop-off sites; it must independently meet the Marin County convenience standard of 25 drop-off sites.

However, the Inmar Proposed November 16, 2021 Plan identifies only three “confirmed” drop-off sites in Marin County that have agreed to become part of Inmar’s program; Inmar has not added a single “confirmed” drop-off site in the over ten months since submission of its January 21, 2021 Marin County proposed Plan. The Inmar Proposed November 16, 2021 Plan must add 22 drop-off sites to meet the convenience standard required by Ordinance Section 7.90.080(B)(1). Therefore, on the face of the Inmar Proposed November 16, 2021 Plan, Inmar has not proven to Marin County that it can develop and implement a program with meaningful numbers of drop-off sites, or frankly that it is even trying to do so.

Moreover, the Inmar Proposed November 16, 2021 Plan does not provide the required information regarding a mail-back program that would be used in underserved areas (where an insufficient number of drop-off sites are located to meet the drop-off site convenience standards). The Inmar Proposed November 16, 2021 Plan states that “Inmar will provide Mail-Back Services as an alternative method for meeting the convenience standard where necessary”. Inmar Proposed November 16, 2021 Plan, at page 3. However, the Inmar Proposed November 16, 2021 Plan contains only 34 mail-back distribution locations in Appendix A-3 that appear to be “confirmed”. When combined with three confirmed drop-off sites, the Inmar approach does not contain sufficient collection services to be approved. MED-Project notes that any program so skewed away from drop-off sites toward mail-back distribution locations would inherently provide less robust services to Marin County residents, at a cheaper cost to Inmar and, Inmar’s suggestion that it will provide two mail-back distribution locations for every missing drop-off site does not ensure a sufficiently robust mix of collection services for Marin County residents. Moreover, even under this proposed standard, which would require 44 mail-back distribution locations, Inmar’s plan fails to provide sufficient mail-back distribution locations.

Inmar's Proposed November 16, 2021 Plan needs to provide an *equitable* level of service as compared to the existing service provider in Marin County. Inmar's Proposed November 16, 2021 Plan needs to meet the service convenience goal in an equivalent and sufficient manner without referring to vague alternative services where drop-off sites are not available. Other jurisdictions in California have established specific guidelines around the use of alternative services. For example, Contra Costa County requires three (3) take-back events to be held in each supervisorial district per calendar quarter. *See* Contra Costa County Code Section 418-16.214(a)(2). The City and County of San Francisco requires one (1) take-back event to be held in each supervisorial district per month. *See* San Francisco Environment Code Section 2205(b). Since Inmar has not proven to Marin County that it can develop and implement a program with meaningful numbers of drop-off sites and mail-back distribution locations, Marin County should apply a similar requirement to take-back events, so that residents are offered regular and convenient take-back events.

**B. Stewardship Plans must provide accurate and reliable means of identifying Authorized Collection Sites and Mail-Back Distribution Locations**

The Inmar Proposed November 16, 2021 Plan does not provide for an accurate and reliable means for Marin County residents to search for locations to dispose of unwanted medicines. Based on our extensive experience in this industry, MED-Project believes that current, accurate mapping of locations and events is essential in providing Marin County residents with an accurate, up-to-date list of available drop-off sites, mail-back distribution locations, and take-back events under a Plan. This is particularly true now and will be true in the future, in light of potential or continuing COVID-related access restrictions or interruptions and related modifications that are being made by businesses in light of the ongoing COVID-19 pandemic.

**II. MED-Project supports the development of a single system of promotion as required by Marin County Ordinance Section 7.90.100**

**A. Coordination on drop-off site signage must require a licensing agreement**

The Ordinance states that all Stewardship Plans shall coordinate with each other and develop a single system of promotion that, among other things, shall "[w]ork with collectors participating in stewardship plans *to develop clear, standardized instructions for county residents on the use of collection bins and a readily-recognizable, consistent design of collection bins.*" Ordinance Section 7.90.100(A)(2) (italics added). With regard to Inmar's drop-off sites, Inmar states that "[k]iosk signage will be designed for consistency with that of existing approved Plan Operators" (the only existing approved Plan Operator in Marin County is MED-Project). Inmar Proposed November 16, 2021 Plan, at 4.

Additionally, Appendices B and C of the Inmar Proposed November 16, 2021 Plan contain depictions of sample drop-off site signage and other program materials which use the "look and feel" of MED-Project's proprietary artwork, designs, branding, and other intellectual property ("MED-Project Licensed Property"). Inmar also states, at page 33, that drop-off site "signage will be coordinated with other approved Plan Operators in accordance with Ordinance 7.90.100(A)". Consistent with MED-Project's actions in other jurisdictions, Inmar may use MED-Project Licensed Property only upon executing a license agreement allowing such use, as further discussed in this section. Moreover, Inmar will be required to comply at all times with the conditions and limitations of such license agreement.

MED-Project has invested substantial time, energy, and resources into creating goodwill in artwork and branding related to MED-Project's mission and services. MED-Project owns intellectual property (registered and unregistered) and proprietary rights in and to the "look and feel" of its drop-off sites and related signage, and in its name, artwork, branding, website, and other materials. Any unauthorized/unlicensed reference to MED-Project's toll-free number or website or use of related promotional materials or elements with a similar "look and feel" to that of MED-Project would infringe on MED-Project's intellectual property rights. *AT&T Corp. v. Vision One Security Sys.*, 1995 WL 476251, at \*5, n.4 (S.D. Cal. July 27, 1995) ("A claim for federal trademark infringement may be brought against any person who, without license from the

holder of the protected mark, uses any 'reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive...'") (citing 15 U.S.C. 1114(1)(a)).

Accordingly, in order to preserve the MED-Project Licensed Property, any circumstances under which Inmar references MED-Project's toll-free number or website or otherwise uses or imitates any of MED-Project's "look and feel" or other proprietary rights (including any marks, materials, artwork, signage, branding, website domain names, call center references, or other intellectual property), must be subject to a license agreement governing the use of these rights and properties. *Audigier Brand Mgmt. v. Perez*, 2012 WL 5470888, at \*7 (C.D. Cal. Nov. 5, 2012) ("where the trademark holder has authorized another to use its mark, there [generally] can be no likelihood of confusion—the prerequisite to any trademark infringement claim."). The intent of the license agreement is to establish reasonable and customary limits that set forth terms to guard and protect MED-Project's proprietary rights and the goodwill associated therewith. MED-Project has previously granted Inmar the use of such rights and properties in other jurisdictions, pursuant to a license agreement. The Inmar Proposed November 16, 2021 Plan does not provide any description of these necessary licensing arrangements.

**B. The Inmar Proposed November 19, 2021 Plan is inconsistent and confusing and does not adequately describe how it will provide for a website, toll-free number and collection services through a website and toll-free number while it coordinates with MED-Project to develop a single system of promotion**

Section 7.90.100(A)(3) of the Marin County Ordinance states that the single system of promotion must include a single toll-free telephone number and single website where collection options and current locations of drop-off sites and mail-back distribution locations will be publicized. MED-Project supports the use of a single website and single toll-free telephone number consistent with the Ordinance and as agreed upon by the approved Plan Operators.

Inmar's position in the Inmar Proposed November 16, 2021 Plan is confusing and inconsistent on the use of a website and a toll-free telephone number during the period after approval. At pages 8 and 20 in the Inmar Proposed November 16, 2021 Plan, Inmar states that it will use the existing website of the existing Plan Operator (MED-Project), and that it would use the existing toll-free telephone number of the existing Plan Operator during that timeframe. Elsewhere, Inmar states that it is prepared to operate a <http://www.safemedicinedrop.com> website within 60 days of approval. Inmar Proposed November 16, 2021 Plan, 8. Then, it says that, alternatively, Inmar can provide a mobile-optimized website of some sort, without any deadline for adoption. Inmar Proposed November 16, 2021 Plan, 8.

Inmar should be required to implement its <http://www.safemedicinedrop.com> website, as well as an Inmar-specific toll-free telephone number, within 60 days of plan approval. Between that time and 12 months after Inmar plan approval, Inmar must deliver services and provide information to Marin County residents through that website and toll-free telephone number. In the 12-month period after Inmar plan approval, MED-Project agrees that it will work with Inmar to develop and implement a single Marin County-oriented website based on the MED-Project.org platform (e.g., [med-projectmarin.org](http://med-projectmarin.org)). MED-Project will not permit Inmar to use the existing MED-Project website or toll-free telephone number at any time as these are part of MED-Project's internal infrastructure, and the Inmar Proposed November 16, 2021 Plan must be modified to reflect that reality. Finally, Marin County cannot approve the Inmar Proposed November 16, 2021 Plan given its confusion and inconsistency regarding the website and toll-free telephone number required by the Ordinance.

**III. The Ordinance requires Inmar to pay all costs and fees associated with its Inmar Proposed November 16, 2021 Plan and its program, if approved**

The Ordinance clearly requires that each Producer must “[p]ay all costs and fees associated with its stewardship plan” and that Plan Operators must pay certain administrative and operational costs and fees. *See* Ordinance Sections 7.90.040, 120, 130. The Inmar Proposed November 16, 2021 Plan is entirely silent as to the payment of such costs and fees. Therefore, the Inmar Proposed November 16, 2021 Plan should be modified to explicitly state that producers must pay for all costs and fees and that Inmar will be liable for such costs and fees as authorized by the Ordinance.

**IV. Self-Usage Restrictions**

Stewardship Plans and proposed Stewardship Plans are public documents. Ordinance § 7.90.060(H) requires that “[t]he Director shall make all Stewardship Plans and proposed plans submitted under this Section 7.90.060 available to the public.” Despite this plain language and the public interest in Stewardship Plans, Inmar makes the following claim on the cover page of the Inmar Proposed November 16, 2021 Plan:

This submission includes information that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed - in whole or in part - for any purpose other than the evaluation hereof. Furthermore, the information contained herein, including, without limitation, Inmar, Inc.’s corporate, financial and technical data, is subject to exemption from disclosure under the Freedom of Information Act, 5 U.S.C. § 552. This document also contains confidential trade secrets and information exempt from disclosure in the public interest under Cal Civ Code § 3426.1 and Cal Gov Code § 6254. The information subject to this restriction is contained in sheets marked: “Use or Disclosure of Information Contained on This Sheet is Subject to the Restriction on the First Page of This Submittal.”

Inmar Proposed November 16, 2021 Plan, cover page.

And, on every subsequent page of the Inmar Proposed November 16, 2021 Plan, Inmar makes the following claim:

© Inmar 2021. Inmar authorizes the posting of the plan dated November 16, 2021 for the purposes of making it available to the public for review.

Inmar Proposed November 16, 2021 Plan *passim*.

This assertion of copyright could be interpreted to limit the future public use of the Inmar Proposed November 16, 2021 Plan. The Ordinance requires the Director to make proposed Stewardship Plans public, period. The Department should not approve a proposed Stewardship Plan attempting to side-step requirements for public access.<sup>1</sup>

If the Inmar Proposed November 16, 2021 Plan is allowed to retain language that asserts federal copyright protections and exemption from federal and state public records laws, it could limit public access to and use of the Inmar Proposed November 16, 2021 Plan, which would have a commensurate a chilling effect on public engagement. Marin County residents may access and use a Stewardship Plan in many ways,

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<sup>1</sup> It may be in the public interest to withhold certain Stewardship Plan information from public disclosure in limited circumstances consistent with all applicable laws, regulations, and other legal requirements (e.g., information related to controlled substance diversion risks). The Inmar Proposed November 16, 2021 Plan’s claims go far beyond that, however.

including through: school (e.g., lessons about product stewardship programs); advocacy (e.g., supporting access to collection services); scholarship (e.g., evaluating Stewardship Plan success); etc.<sup>2</sup> Upon seeing the Inmar Proposed November 16, 2021 Plan's language, which could be interpreted to limit public use, Marin County residents will not hire an attorney to determine their rights to use the Inmar Proposed November 16, 2021 Plan or portions thereof. Rather the teacher planning a product stewardship lesson will find a different example, the advocate will use another citation, and the scholar will gather other data; public engagement will be suppressed.

The Inmar Proposed November 16, 2021 Plan's self-imposed and unjustified public access restriction also adversely affects the Department and other Plan Operators. With respect to the Department, this attempted restriction has the potential to decrease transparency by frustrating compliance with the California Public Records Act. With respect to other Plan Operators, the claimed restriction inhibits Stewardship Plan coordination under Ordinance Section 7.90.100. It also creates an uneven playing field. Consistent with Ordinance Section 7.90.060, MED-Project's Stewardship Plan (and related documentation), including its collection and disposal network, is publicly available on the Department website for anyone to review. See Marin County Environmental Health Services, Safe Drug Disposal Ordinance, <https://www.marincounty.org/depts/cd/divisions/environmental-health-services/safe-drug-disposal-ordinance> (last visited February 22, 2021). The public nature of this document and the level of detail it contains affects MED-Project negotiations with potential vendors; Plan Operators able to limit public access to their Stewardship Plan would have a competitive advantage over MED-Project. Additionally, in contrast to the open public review process for MED-Project's Stewardship Plan, the chilling effect of the Inmar Proposed November 16, 2021 Plan's unjustified public use restriction may have affected this public comment period and, thus, the Proposed Plan's approval process.

Additionally, Inmar's bald assertion that the Inmar Proposed November 16, 2021 Plan contains such confidential information and/or trade secrets such that it should be exempt from the federal Freedom of Information Act (5 U.S.C. § 552) or from the California Public Records Act (Cal. Gov. Code § 6254) are inaccurate and could further dissuade members of the public from using or engaging with the plan.

In short, Stewardship Plans are public documents developed with the Department in a public process. The Department should not approve a proposed Stewardship Plan that attempts to contravene the Ordinance's public access requirement. Doing so would chill public engagement and create competitive imbalances. Instead, the Department must apply the Ordinance's public access requirement equally to all Plan Operators and require the Inmar Proposed November 16, 2021 Plan to remove the undue public access limitation.

MED-Project appreciates your consideration of these comments. Please do not hesitate to contact me with any questions or concerns.

Sincerely yours,



Dr. Victoria Travis, PharmD, MS, MBA  
National Program Director

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<sup>2</sup> Although these are likely permissible uses of the Inmar Proposed November 16, 2021 Plan under federal copyright law, under either fair use and/or implied license theories, the Inmar Proposed November 16, 2021 Plan's attempt to limit public access extends public use restrictions beyond what copyright protections afford.