

Home Delivery of Medical Cannabis

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I. Executive Summary

The 2018 session of the Washington State Legislature considered legislation that would have authorized licensed cannabis retailers in Washington to provide home delivery of medical marijuana products to qualified medical marijuana patients. That measure was not enacted, but led to adoption of a proviso in the 2018 Supplemental Operating Budget directing the Washington State Liquor and Cannabis Board (WSLCB) to study options for such a system and issue a report to the Legislature by December 1, 2018. This report fulfills that mandate.

One major strategy the WSLCB used in conducting the study was reviewing the experience of other jurisdictions. Several states and Canada have authorized home delivery of cannabis products – either medical, recreational, or both. Regulations governing these programs are summarized in this report. Proactive efforts to engage a wide range of stakeholders and solicit their suggestions were conducted. Four optional approaches to this issue were identified.

- Status Quo, or no change
- Authorization with oversight similar to current enforcement approaches
- Authorization of a market-oriented system and relatively limited oversight
- Adoption of strong incentives to induce businesses to offer delivery services

WSLCB does not embrace one recommended approach to structuring a delivery system. Instead, this report describes some of the advantages and disadvantages of each of the four options. In addition, the report emphasizes a primary concern of the Agency – the difficulty of providing effective oversight and enforcement of state laws and rules in a mobile environment, along with the significant costs for doing so. The Agency also requests that any authorizing legislation be crafted so as to delegate to the Agency the opportunity to determine a good portion of the program details through administrative rules.

If policymakers wish to consider authorizing home delivery, the WSLCB stands ready to assist in those efforts. The “Program Design Questions” section of this report identifies many of the issues that would likely need to be addressed in structuring a home delivery system. While the Agency believes most of these questions should be answered through administrative rule making, the information is presented in such a way that it is hoped policymakers might be able to use it to determine which issues reflect their highest priority concerns.

Any system of home delivery of medical marijuana will run into the problems of limited market demand, high costs for businesses providing delivery, as well as a very limited supply of Department of Health-Compliant medical cannabis products being turned out by producers and processors. These contextual factors need to be taken into account in developing any policy aimed at providing home delivery service to medically authorized patients with mobility challenges.

II. Introduction

In 2018, the Legislature considered a measure to authorize the home delivery by licensed cannabis retailers of medical marijuana to patients. The bill, House Bill 2574 sponsored by Rep. Shelley Kloba, was not enacted, but formed the basis of a proviso which was included in the 2018 supplemental budget passed by the Legislature and signed into law by Gov. Jay Inslee. (See Appendix C) The proviso directed the Washington State Liquor and Cannabis Board (WSLCB) to conduct a study of regulatory options and possible challenges relating to the establishment of an endorsement to a marijuana retail license that would authorize the retailer to provide home delivery services for qualified medical patients in Washington State.

In 2017, The National Academy of Sciences, Engineering, and Medicine released a report finding conclusive or substantial evidence for cannabis as an effective therapeutic option for the treatment of chronic pain in adults, as an antiemetic for the treatment of chemotherapy induced nausea and vomiting in cancer patients, and for the improvement of patient-reported multiple sclerosis spasticity.¹ Evidence on the use of medical cannabis continues to develop for a variety of conditions that may limit a person's mobility or ability to drive to a retail cannabis store. In September of 2018, the Drug Enforcement Administration (DEA) rescheduled Epidiolex, the first Food and Drug Administration (FDA) approved cannabis-derived pharmaceutical. Epidiolex is indicated for the treatment of pediatric epilepsy. Though the DEA rescheduled the specific drug formula within Epidiolex to Schedule V, it did not reschedule marijuana or any of its derivatives (THC, CBD).

Marijuana remains a Schedule 1 drug, as the United States is party to the Single Convention on Narcotic Drugs of 1961, a United Nations agreement that maintains a set list of internationally agreed upon controlled substances in order to reduce the negative externalities associated with the proliferation of controlled substances by any single party.² Simultaneously, evidence continues to develop that demonstrates the negative consequences of marijuana use, particularly for young people in the realm of cognition, judgement, and memory.³

The intersection of cannabis as both a therapeutic drug and an intoxicant for personal use make evaluating the establishment of a home delivery endorsement for medical patients a complex undertaking. The WSLCB has utilized the Cole Memorandum (Appendix B)⁴ as the directive for its regulatory framework, and despite the memorandum's having been rescinded by Attorney General Jeff Sessions in January of 2018, the WSLCB continues to evaluate regulatory options based on those initial guidelines, in conjunction with our own agency mission to promote public safety and trust through fair administration and enforcement of cannabis laws. In order to consider the home delivery of cannabis to medical patients, the WSLCB must balance the goal of providing access to patients with tightly regulating a federally controlled substance.

Understanding the size of the medical market

Since the inception of the Department of Health database of authorized medical patients, a total of 33,384 cards have been created and issued. However, as of June 29, 2018, only 15,136 cards were currently active. Authorized patients and designated providers have the option of removing themselves from the database or not renewing after the course of a year. Based on traceability data from 2017, it is estimated that sales to authorized medical patients make up approximately 1.6% of the total marketplace. While only 15,136 patients are currently authorized in Washington State, it has been suggested that the actual number of people using cannabis for medicinal reasons in Washington State is much larger. Research on a population of cannabis users in Israel found that of the population studied, 42% identified as recreational users, 38% identified as unlicensed medical users, and only 5.6% identified as licensed medical users. The licensed medical users tended to be older than both recreational and unlicensed medical users.⁵ Though Israel is obviously a very different cultural and regulatory context, it provides insight into why licensed medical populations may be smaller, with some choosing not to participate in a licensing structure for privacy, or because they may not feel it necessary or beneficial if they are able to acquire cannabis without the authorization.

III. Regulatory Structures from Other Jurisdictions

To provide context for how home delivery is managed, the WSLCB collected regulatory and policy information for programs in several other states as well as Canada. Many states had similarities, like having the delivery service as a part of the retail establishment, and having a maximum amount that can be delivered or transported at one time; measured either as a maximum monetary value or as an amount of marijuana measured in weight of product. All jurisdictions required age verification of the recipient, and some type of traceability mechanism to log or monitor the movement and delivery of goods. It should be noted that while information on Canada's delivery framework was obtained, much of Canada's regulatory structure is not an option for Washington as much of the Canada system is facilitated by the longstanding legality of medical marijuana in Canada at the federal level. Specifics on the programs are listed below as available:

Oregon – Recreational and Medical

- First State to allow recreational delivery
- Nearly half of retail licensees hold delivery permits
- Can deliver only in the city in which they are licensed
- Delivery allowed during hours 8 a.m. to 9 p.m.
- Cannot deliver to “transient” addresses – no motels, dorms, campgrounds
- Customers must be 21 years, must sign for delivery
- Customer can receive only one delivery per person per day
- Product must be in locked box, secured to the delivery vehicle
- Delivery vehicle cannot carry more than \$3,000 worth of product at one time

California – Recreational and Medical⁶

- During delivery, the employee may not engage in any activity except delivery and necessary rest, fuel, or vehicle repair stops
- During delivery, delivery employee must carry a copy of retailer's current license, the employee's government-issued ID, and an ID badge provided by the employer
- Delivery employee must confirm the identity and age of the delivery customer and place cannabis product in a re-sealable child-resistant opaque exit package
- Deliveries allowed only to physical addresses and not on publicly owned land or on land in a building leased by a public agency, including land held in trust for a Tribe or Tribal member unless authorized by applicable Tribal law
- Cannabis must be in a locked box, container or cage that is secured on the inside of the vehicle and not visible to the public

- Cannabis cannot be left in an unattended vehicle unless the vehicle is locked and equipped with an active alarm
- Vehicles must be outfitted with GPS tracking system attached to vehicle; licensee must own a dedicated GPS device used for delivery only
- Licensed retailer must be able to identify the location of all delivery vehicles making deliveries
- No use of unmanned vehicles is allowed; deliveries must be made in person
- Cities and counties can prohibit delivery or set more restrictive requirements
- Delivery employee cannot carry cannabis goods in the vehicle in excess of \$10,000 at any time
- Delivery employee may only perform deliveries for one licensed retailer at a time and must depart and return to the same licensed premises before taking possession of any cannabis goods from another licensee to perform deliveries
- Driver must have a delivery inventory ledger of all cannabis goods provided to the driver, with track and trace identifier, weight, volume; after each delivery, driver must update inventory ledger to reflect current inventory in possession of the driver
- Driver must maintain a log that includes all stops
- Delivery receipts must be prepared, and contain name and address of the retailer, first name and employee number of the delivery employee and the employee who prepared the order, first name of the customer and a retailer-assigned customer number for the person ordering delivery, date and time of delivery request, delivery address, detailed description of all cannabis goods, amount paid, date and time delivery was made, signature of the customer, handwritten or electronic
- Delivery employee may only travel between the licensee's premises, one delivery address to another, and from a delivery address back to the licensed retailer's premises.

Nevada – Recreational and Medical⁷

- Deliveries can be made by a registered agent employed by a marijuana retail store or by an independent contractor which has a service agreement with a retail marijuana store to perform deliveries and whose name has been disclosed to the Department of Taxation
- The name of retail marijuana retail store and all independent contractors who perform deliveries must be published on the Department's website
- The Department must have confirmation that any delivery personnel holds a valid marijuana establishment agent registration card
- Delivery agent must obtain verification of the identity and age of the consumer
- Delivery agent cannot deliver any other item other than paraphernalia or merchandise directly related to the marijuana product
- Delivery only permitted during hours the retail marijuana store is open for business

- Delivery agent can travel only between the retail marijuana store and the delivery destination, making no unnecessary stops, and fuel stops must be documented
- Marijuana products must be secured at all times during the delivery
- Retail store must have a copy of a delivery manifest generated by the seed-to-sale tracking system
- Before delivery, the retail store must enter the delivery information into the seed-to-sale tracking system
- Manifest must include date and time of delivery, name and address and license number of the retail store, name and address of each customer, name and quantity of each item delivered, make, model license plate number and delivery vehicle identification card, name, number of the agent registration card and signature of each delivery agent
- After delivery, the retail store must ensure the trip plan is accurate
- Retail store must reconcile all transactions in seed-to-sale tracking system each day
- 5 ounces of marijuana is the limit for deliveries in a single trip and 1 ounce to an individual consumer
- No deliveries to addresses with a gaming license; deliveries are only allowed to a private residence
- Prior to delivery, the agent must confirm by telephone that the consumer ordered the product and verify the identity of the consumer
- Marijuana must be stored in a lockbox or locked cargo area with the vehicle, and not be visible from outside the vehicle, and contained in sealed packages and containers which remain unopened during delivery
- No one can be in the delivery vehicle who is not an agent registered for delivery
- The Department must approve any vehicle to be used for delivery and the vehicle identification card issued by the Department must be kept in the vehicle at all times
- Delivery vehicles cannot have advertising or signage relating to marijuana, and must have an audible car alarm
- Retail store must provide refrigeration for perishable marijuana products, if required

New York – Medical⁸

- A registered organization may not sell, dispense or distribute approved medical marijuana products via a delivery service without prior authorization from the New York State Department of Health (“Department”). Registered organizations must submit a proposed Delivery Service Plan to the Department. The plan must include or address:
 - Hours of delivery and locations to be served
 - Registered organization location(s) that will provide delivery service
 - Proposed fee(s) for delivery, if any, including any justification supporting the proposed fee(s)

- The registered organization cannot change the Delivery Service Plan or actual delivery procedures without written approval from the Department
- Vehicles must be approved by the Department
- Each delivery vehicle must be identified, including make, model, year, vehicle identification number (VIN), and plate number
- Vehicle must have locked, secure storage compartment not visible outside the vehicle
- Delivery organization's plan must describe precautions it will take against theft or accidental loss of approved medical marijuana products and cash, including how products and cash will be managed and limited to that which is reasonable and necessary
- Plan must outline emergency procedures in the event of theft or accidental loss, including, but not limited to, communication to the Department and a state or local law enforcement agency of competent jurisdiction.
- Emergency procedures to secure medical marijuana products and cash aboard a delivery vehicle in the event the delivery vehicle is disabled, and to notify the Department and a state or local law enforcement agency of competent jurisdiction if the registered organization is unable to secure them.
- Products will be transported from the manufacturing or dispensing facility in a locked, safe and secure storage compartment that is securely attached to the vehicle transporting the marijuana, and that is not visible from outside the vehicle
- All delivery vehicles are staffed with a minimum of two registered organization employees, one of whom must remain with the vehicle at all times that the vehicle contains marijuana
- Transport team member must possess a copy of the transportation manifest at all times when transporting marijuana products and shall produce it to the Commissioner, the Commissioner's authorized representative or a law enforcement official upon request
- No transport or delivery outside of New York State's border, to any Native American reservations, or to federally owned properties within New York State
- Description of a clear and efficient process for receiving and fulfilling delivery requests from certified patients, including a method to validate that the certified patient or designated caregiver will be available to personally accept delivery
- Method to validate the patient's certification information
- Method to validate the patient or designated caregiver's registry identification card
- Certified patient or designated caregiver must personally sign for products delivered
- Capture delivery transactions in the registered organization's seed-to-sale system
- Submit data to the PMP registry
- Provide sealed, tamper-proof packaging to prevent tampering during transport
- Transportation manifest will be completed contemporaneously with delivery, and submitted to the Department within one week after completion of the delivery

Massachusetts – Medical⁹

Draft Massachusetts state regulations had planned to allow for home delivery of recreational as well as medical cannabis. However one of last changes made prior to adoption of the set of regulations was removal of authorization for home delivery of recreational products. Regulators indicated the issue could well be revisited in the future.

- Only a Registered Marijuana Dispensary (RMD) agent may transport marijuana to registered patients or personal caregivers
- The RMD must weigh, inventory and account for on video all marijuana to be transported prior to its leaving the origination location
- Complete a shipping manifest for retention by the origination location and carry a copy of the manifest with the products being transported
- Retain shipping manifests for at least one year
- Transport must be in a secure, locked storage compartment that is part of the vehicle transporting marijuana;
- Marijuana must not be visible from outside the vehicle
- Transport must be in a vehicle that bears no markings indicating transport of marijuana or the name of the RMD
- Delivery times and routes must be randomized
- Transport vehicles must be staffed with a minimum of two agents, at least one of whom must remain with the vehicle at all times the vehicle contains marijuana
- Each delivery agent must have access to a secure form of communication with personnel at the sending site at all times the vehicle contains marijuana
- Each agent must carry Department-issued registration card at all times
- Each vehicle used for transport must have a GPS monitoring device that is monitored by the RMD during transport

Canada – Medical system has allowed delivery; Recreational to be added

- Traceability is done with a tracking number on the parcel to be delivered
- Deliveries are done through the national postal system; UPS and FedEx not interested in providing the service; some retail stores deliver themselves, if location for delivery is close
- No cost for delivery
- Edibles and concentrates cannot be delivered
- The licensee is responsible for ensuring security, traceability
- Licensees decide whether to require signatures of customers
- While there is no age limit for medical marijuana, a responsible adult's approval is required

- Age verification becomes a requirement with delivery of recreational product;
- Customers can pick up deliveries at a post office
- No unique restrictions regarding delivery vehicles are in place
- Packages cannot have identifying markings
- No odors from the package are allowed, or it cannot be delivered
- Delivery driver doesn't even know the parcel contains cannabis
- Patients buy cannabis through a web portal; credit cards are used, no cash ... it is an electronic transaction

Canadian officials report that one of the main problems that emerged under their system was odor. Regulators moved to prevent packaging that would allow odors to escape during the delivery process, including separation requirements regarding storage locations within retail shops to prevent entry of odors in finished packages.

Arizona – Medical

Arizona's regulations do not explicitly address the delivery of medical marijuana, but do have a rule structure that allows for delivery under these conditions:

- Before marijuana may be dispensed to a registered designated caregiver or a registered qualifying patient, a nonprofit medical marijuana dispensary agent must access the verification system and determine the registry identification card is valid.
- Each person presenting a registry identification card is the person identified on the card.
- The amount to be dispensed would not exceed the limit of 2.5 ounces of marijuana during any fourteen-day period.
- The dispensary must enter the following information in the verification system:
 - How much marijuana is being dispensed to the registered qualifying patient.
 - Whether it was dispensed directly to the registered qualifying patient or to the designated caregiver.
 - The date and time.
 - The registry identification card number of the dispensary agent who dispensed the marijuana.

New Mexico – Medical¹⁰

- Department of Health authorizes couriers, who can contract with a licensed non-profit producer to deliver usable cannabis to qualified patients and caregivers
- Uniform pricing for all producers is required
- Couriers are prohibited from requesting or receiving payment from a qualified patient
- Courier must verify the recipients' identity with a photo ID and a department-issued cannabis identification card
- Courier cannot possess cannabis longer than seven days

- Couriers must train their personnel regarding confidentiality of information concerning patients and primary caregivers
- Personnel of a courier cannot possess a firearm while distributing or possessing cannabis
- The Department issues an identification card to each authorized employee of an approved courier which authorizes that individual to transport cannabis; the employee must carry the card at all times.
- Courier approval by the Department is valid for one year.
- Couriers must adopt, maintain, and enforce chain of custody procedures and documentation to ensure appropriate tracking and inventory of usable cannabis.
- Couriers must adopt, maintain and enforce security requirements to ensure cannabis transported is secured and to promote the safety of courier personnel as well as patients and caregivers who receive packages.
- As part of the application for approval, a courier must submit plans for a host of operational procedures, including plans for delivery, security, safety, descriptions of all vehicles to be used, a list of employees, criminal history documentation, fees, producers for whom they will deliver, training materials for drivers, protocols for contacting and communicating with qualified patients and caregivers, lists of owners and people with authority over the management or policies of the courier, etc.

Colorado – Delivery Prohibited

Colorado regulatory officials were consulted as part of this study – despite not having approved home delivery for medical or recreational marijuana – because of the history of close collaboration between regulatory agencies of the two states where recreational marijuana systems were first approved.

Advocates have pushed for home delivery in Colorado’s Legislature repeatedly. Initially, the effort included both recreational and medical products, and later the push was narrowed to the medical system. No bill has passed, in part due to opposition from local law enforcement and the Governor’s office, as well as the costs of oversight and enforcement.

Some of the issues of concern to regulators and law enforcement regarding home delivery are as follows:

- Whether to allow third parties to perform delivery, or limit authorization to retailers;
- Defining the transaction as a direct relationship between the retailer and the customer is a goal;
- Determining the age and identity of the customer taking delivery; requiring body cameras has been discussed in this context;
- Hoping to avoid cash transfers, using electronic payment in advance is the goal;

- Limits on the total amount of product carried;
- Would a vault be required?
- Crossing jurisdictional boundaries is a concern; how many local governments would opt in to allow deliveries?
- How much of the enforcement obligation would fall upon state regulators, or upon local law enforcement.

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IV. Stakeholder Feedback

Stakeholders had a wide range of nuanced opinions in regard to the establishment of an endorsement on a retail license for medical delivery. While a few stakeholders were vehemently against medical delivery services, most stakeholders described conceptually supporting increased access and delivery for patients, but shared a variety of concerns regarding the implementation of such a program. The following is a list of concerns and opinions voiced by individuals and groups throughout the stakeholder engagement process.

Safety of driver and product recipient

Nearly all stakeholders mentioned concern for the safety of drivers and recipients of product. As retail stores continue to have banking issues that prevent or challenge the use of credit cards, drivers and patients may need to hold large amounts of cash in order to complete a delivery transaction, which may increase susceptibility to theft. Further, drivers also may feel at risk transporting large quantities of marijuana due to its illicit value. Some suggested that if employees were to deliver cannabis to medical patients, there should be two people, which may be economically challenging for the retailer. Further, it was suggested that the vehicle should be unmarked, for the safety of the drivers, however this may challenge the safety of the patient (who may be unable to recognize the vehicle), and create a challenge for enforcement officers looking to identify the vehicle. Safety was also a concern from members of the patient community, who explained that some patients may have limited mobility or capacity, and had concern over any negative interaction that may occur during the transaction. Stakeholders were curious as to how the delivery driver would be trained, particularly if the driver would also have to have gone through medical consultant training in order to deliver to patients.

HIPAA compliance and Patient Privacy

Some patients and retailers expressed concern over the management of private patient information, specifically mentioning the Health Insurance Portability and Accountability Act (HIPAA) and concerns around how patient's names and addresses would be protected within a delivery system.

ID Verification

Some retailers expressed concern over the identification verification process. Retailers explained that often they rely on teams of employees and management to handle ID verification. Further, they explained that when an ID is refused it is often important for the manager to be present to support the employee in refusing service due to a false, expired, questionable, or unavailable ID. Retailers had concern for having their employees verify ID's outside of the retail store, and potentially manage sale refusals without support staff.

The addition of systemic complexity to the medical market

Patients expressed concerns that they had higher priorities they wanted addressed prior to delivery. Many patients expressed a desire for greater availability of DOH compliant products, or products held to an elevated testing standard. Many patients also desired a wider variety of products and potencies, and felt that availability of products that were tailored to patients' needs was paramount. Patients were also concerned around the price of products and felt that adding delivery may add expense.

Economic viability

Economic viability was the most commonly presented issue. Delivery would exist in a small marketplace if it were exclusive to medical patients. Retailers would have to take on the expense of additional employees, who may require additional training. They would need a vehicle, and potentially a vault or box to lock product or cash within that vehicle. Stakeholders were curious as to whether retailers would be mandated to provide delivery services, or if it would be optional. Many said if retailers were not required to provide this service, they would not be likely to do so as the cardholder community is such a small share of the marketplace. If the retailers were mandated to provide this service, they would need to find a way to provide a service charge for the delivery that took into account differing costs based on delivery distance. Patients expressed concern about current prices how delivery may increase this cost.

Rural areas, ban and moratorium regions

Retailers had a series of questions and concerns in regard to how delivery boundaries would be identified and managed. In dense areas, who would get a delivery when multiple stores were within reach? In rural areas, how would patients be charged in order to reflect the cost of long distance deliveries, and how could this be made affordable or equitable for patients? Retailers also wondered if they would be able to deliver in areas that had bans or moratoriums that did not allow for retail stores, and if not, how patients in this area would be served. Further, retailers were curious as to whether or not they would be able to deliver in buffer zones, for example, if a patient lived within 1,000 feet of a school.

Endorsement structure

Some perceived delivery service as an economic opportunity that could stay in the hands of the retailer if service were to expand to recreational customers. Some felt that the process of delivery could be handled by a third party with delivery-specific experience. Others considered delivery to be an equity opportunity for new business owners who had wanted to participate in the cannabis industry but may not have had the resources to engage in the initial licensing process or who hold licenses but are unable to operate due to a local ban or moratorium.

Support for Medical Delivery

Some stakeholders from the medical and academic communities voiced support for the proposition of medical delivery, specifically noting that they feel the delivery of medications is a patient right, and that this service should be provided regardless of economic feasibility.

V. Structural Challenges

A. Enforcement

Officers and leadership from the Enforcement and Education Division of the WSLCB were consulted extensively as part of this study. Enforcement officers from all regions of the state were gathered to discuss the issues and challenges surrounding the question of home delivery. The bottom line takeaway from these conversations among enforcement staff is that home delivery would present a very difficult challenge to maintain effective oversight and compliance. In order for WSLCB to provide effective oversight and truly monitor compliance, significant resources would be necessary. If the state were to decide that limited enforcement efforts in regard to home delivery for medical cannabis patients is an acceptable policy, then significant new resources for enforcement would not be necessary.

Some of the primary enforcement concerns include the following:

- An avenue for diversion;
- Youth access
- Compliance checks would be very difficult logistically and financially, since this usually involves underage WSLCB personnel posing as legitimate buyers to see if an illegal purchase can be conducted;
- Verifying drivers are not under the influence;
- Confirming the amount of product leaving licensed premises;
- Stopping delivery vehicles to conduct checks;
- Risk of theft of cash and marijuana products;
- Driver safety, given unknown conditions at a private residence away from the security measures in place at retail establishments, such as cameras, other employees, etc.

Enforcement would require significant new resources to expand staff to train for and conduct compliance checks in a mobile setting. Further, it may be difficult for WSLCB enforcement staff to conduct certain components of a compliance check in a mobile setting without traffic enforcement authority. Enforcement brought up concern around deliveries that may occur with multiple people in the house, if some people in the residence are under the age of twenty-one. Ride-alongs and video recordings were two enforcement strategies that were discussed to mitigate compliance issues; however, both may present a challenge to patient privacy.

B. Financial Barriers

Any consideration of a policy framework for home delivery of marijuana to medical cannabis patients must confront the structural financial barriers to creating an effective delivery system. Medically compliant product is required to undergo more rigorous testing than cannabis

products intended for the recreational market. Specifically, testing for pesticides and heavy metals is required for medical product but not recreational. This means costly testing procedures must be conducted, and that would normally drive up the cost of the product. The higher cost of the product may limit the retailer's ability to cover costs through higher prices.

Second, there is obviously the considerable cost of the delivery infrastructure itself – vehicles, fuel, maintenance and insurance costs, drivers' wages, equipment, training employees in additional procedures, and other costs to providing the service.

Third, there is potentially quite limited market demand. If there are only about 15,000 currently active members in the database of authorized medical patients across the entire state, that is a quite limited potential market for justifying business investment in delivery infrastructure. This makes the economies of scale very challenging. While it is assumed the retailer would charge a delivery fee, it may be difficult for medical patients to afford a delivery fee that would be high enough to cover the costs.

Finally, in the relatively few areas of the state that are heavily populated enough to offer a market demand of any significance, there could be many retailers potentially in competition for a limited pool of potential medical patient customers.

Oregon Liquor Control Commission officials reported that the home delivery system in Oregon isn't financially viable enough for retailers to offer in all but about three of the most densely populated areas of the state. And that is for a system of delivery that includes both recreational and medical patient customers.

As a result, the WSLCB concludes there is likely to be a significant set of structural financial barriers to creating an effective home delivery system of medical marijuana in Washington that would be affordable to patients and accessible in rural and suburban areas.

VI. Program Design Questions

Overarching challenges

Any delivery system will face certain common policy questions and challenges. To an extent, these system design questions are independent of the particular approach or option under consideration. Some of the design issues and options are more aligned with or relevant to one or more of the four options outlined in this report.

If the Legislature and the Governor are committed to approving the home delivery of medical cannabis, the WSLCB recommends broad statutory language that would allow the agency significant flexibility to design most program details through rule making. There are myriad specific program design questions that merit closer attention and deliberation than this interim study and report have attempted.

The table below is intended to be illustrative. It identifies many, but by no means all, of the questions that must be answered in the process of designing a regulatory program providing for home delivery of medical cannabis.

Delivery Program Design Issues

Issue	Option(s)	Pros	Cons
Authorized Entity	Licensed Retailer	Easier enforcement	Reduced effectiveness
	New License Type: distributor/delivery	Enlists market forces	More difficult to enforce
Vehicle Requirements	Registered with LCB	Facilitates oversight	Administrative costs and IT system demand
	Lockbox in trunk	Improves public safety	Raises costs for delivery provider
	GPS device required, cannabis markings prohibited	Improves public and driver safety by facilitating monitoring	Raises costs for delivery provider, may reduce customer's perceived safety
	Passenger prohibition	Reduces risk of non-compliance	May reduce safety for driver
Driver Requirements	Training: budtender permit, medical database verification	Improved compliance, quality of service to patients	Raises costs for delivery provider

	Medical Consultant	Highest level of service to patients	Raises costs for delivery provider; removes medical consultant from retail premises during delivery
	Two employee occupants in vehicle	Improves security for drivers, compliance	Significantly increases costs for provider
Hours of Operation	Same as retailer	Consistency facilitates enforcement	May slightly limit patient access
Product Quantity limits	Per person medical product limit for number of customer orders being filled in one trip	Limits could be set based on daily purchase caps, monthly patient need or other amounts	Economies of scale for providers is impacted to some degree
Eligible Product type	Medically compliant product only	Facilitates enforcement	Limits financial viability, attractiveness to providers
	Medical and adult use	Improves financial viability for providers to offer service	Amplifies enforcement concerns
Packaging	Child Resistant outer packaging	Reduces public safety concerns	Raises costs for providers
Cash Carrying Limits	Total cost of orders out for delivery plus \$200 for change purposes	Reduces public safety concerns	Logistical challenge for providers in cash-only industry
Service Areas	Local bans honored	Addresses concerns of local officials	Harms patient access to service; enforcement complication
	Local bans pre-empted	Improves patient access, avoids enforcement challenge	Generates local opposition; partly nullifies authority granted under I-502
	Tribal approval for delivery to and from Indian Country	Honors the spirit of Tribal Compacts and government to government relationships	Presents logistical and enforcement challenges in achieving compliance

Operational Procedure	Manifest contents; several required data elements to consider	Important public safety component	Burden and cost placed on delivery provider
	Ordering by phone, internet	Convenience for patients	Verification, other enforcement concerns
	Verifying identity, age, intoxication, database registration	If done effectively, enhances public safety	Challenge to accomplish through training, monitoring
	Travel route, limits	Aids enforcement	Provider constraints
Privacy	Retailer-created customer code	Manifest does not include patient full name	Another procedural step required of retailer
Delivery locations	Permanent residence, no transient addresses	Enhances public safety	May reduce access for some patients
Customer eligibility	Database registration	Facilitates enforcement	Limits patient access to delivery
Taxation	No change from current law	Simpler to administer for agency, retailers	Limits appeal, financial viability of program
	Exempt excise tax on medically compliant product	Enhances appeal of program to patients, may boost database registrations	Reduces state revenue, makes system more complex for retailers
Fees	Retailer sets fees without constraint	Flexibility may induce more providers to offer service	Could make access less affordable for patients
	\$10 or per-mile limit on delivery fee	Enhances affordability for patients	May limit availability of service, for retailers trying to cover costs

VII. Options and Recommendations

The WSLCB does not offer a recommendation in support of one or more of the options outlined in this report. It is for policymakers in the Legislature and the Governor's Office to make such determinations. There are requests the WSLCB would have in proceeding down this path, to the extent state policymakers choose to do so.

The agency reiterates the significant concern it has about the difficulty and cost of providing effective oversight and enforcement in seeking compliance from any home delivery system. In addition, the agency requests that, whatever direction policymakers choose, the agency is delegated substantial flexibility through the rule making process to design program details.

Option 1: No Change

One option for the state to consider is to make no change from current law. Under this option, home delivery would remain illegal in Washington for marijuana licensees, customers and all product types.

Advantages

There is a plausible rationale for this "no action" or status quo alternative. One of the strongest advantages is that it avoids a very difficult choice for lawmakers and budget writers. Allowing home delivery would appear to require choosing between either, a) a costly regime of oversight by enforcement officers in order to achieve general compliance with state laws and regulations; or b) a program largely devoid of meaningful efforts to achieve compliance and accountability with regard to delivery activities. This dilemma is similar to the one surrounding home grows: recreational growing at home would seem to require either a very aggressive, intrusive and expensive enforcement regime, or essentially abandoning the effort to pursue compliance and enforce state laws and rules.

Beyond the risks involved in a forced choice between relatively high costs and lax enforcement efforts, there is the very real possibility that authorizing home delivery of medical cannabis products to patients would not matter anyway. Given the apparent dearth of medical marijuana product on the shelf today in retail shops, what difference would it make to authorize delivery of products that are not being produced and offered for sale under any terms?

This underlying problem is one that any policy for home delivery will have to confront: there appears to be very little production or availability of medically compliant product on the shelves today in the retail cannabis stores. The fact the home delivery is currently illegal does not appear to be the cause.

Disadvantages

The obvious drawback of the status quo option is that the problem of inadequate patient access to medical product will remain unaddressed. It is not possible to precisely document the scale of this problem, but whatever the number may be of Washington residents who could benefit from improved access to medical cannabis, those individuals will gain no relief from the current direction of the market and the industry absent a policy intervention by the state.

Option 2: Delivery with Oversight

This option envisions allowing home delivery of medical cannabis to authorized patients along with the extension of the current oversight and enforcement procedures, adapted as nearly as possible to a mobile context, to this new activity.

Advantages

This option would carry the advantage of bringing state policy in alignment with the general principle that patients should have access to medicines that may contribute to their well-being. Current law prohibits one obvious theoretical solution for medical cannabis users who have very limited mobility and few social supports in their lives in terms of caregivers, family or friends available and willing to help obtain and deliver product.

Extending the current oversight and enforcement approach to the new activity of delivery is also administratively helpful due to how familiar enforcement officers are with current approaches.

Disadvantages

As stated above, extending the current oversight activities to the mobile environment of a home delivery system will be expensive for the state, largely but not solely due to enforcement costs. As a point of reference, the fiscal note for House Bill 2576 in the 2018 session, which would have authorized home delivery, projected known costs of at least \$770,000 the first biennium and \$575,000 in the second biennium. Additional indeterminate costs were noted. That fiscal note doesn't necessarily provide the definitive conclusion about system costs once all factors are more carefully considered. Beyond costs, there are also the concerns about safety of drivers, risk of theft of marijuana and cash, youth access, and so forth. Conducting compliance checks in a mobile environment is logistically difficult, as well as costly; it also presents safety risks to administrative interns under the age of 21 who work with WSLCB on compliance checks. Even with significant new resources, the effectiveness of enforcement efforts to achieve compliance is far from assured in the context of the mobile environment.

It is also distinctly possible that this option would not achieve the central policy objective at issue in this report: giving patients ready access to affordable medical product from their homes. Home delivery, with or without significant oversight, will not by itself lead to the production of medically compliant product or the willingness of retailers to stock the product and offer to deliver it to customers' homes.

Option 3: Delivery with limited oversight, market-based approaches

This option envisions authorization of home delivery of medical cannabis without the same level of oversight and enforcement currently employed across the retail market. The limited oversight option would also rely upon market-based mechanisms to build out major components of the system. For example, third parties, not just licensed retailers, might be willing to provide delivery service. There are companies that provide cannabis delivery service in other states. There are mechanisms such as ride-sharing companies that might be interested in providing this service. It seems unlikely that private sector delivery services would be willing to enter this market if it were heavily regulated. The traceability system and the rules to which retail licensees are subject could provide at least some level of accountability that in theory could be used to limit potential diversion, youth access, criminal activity and other public safety concerns. One stakeholder suggestion was that the opportunity to provide

delivery service might be one way for licensees located in local jurisdictions with bans or moratoria to get involved in the industry.

Advantages

This option carries the benefit of lower costs to the state. It would also provide some potential for additional entrepreneurship in the cannabis industry. It might be more likely than some other options to achieve a desired result: truly giving patients – at least in the more densely populated urban areas of the state – access to medical cannabis delivery service to their own homes,.

Disadvantages

The downsides of this option are manifold. Limited oversight of delivery activities, firms, personnel and procedures would significantly increase the risk of youth access to cannabis, the risk of diversion from the state-licensed system to the black market and other states, and the risk of criminal activity including organized crime, among other risks. A loss of revenue could occur as a result of diversion without monitoring by WSLCB officers. General compliance with state and local laws and rules would also be a significant risk. For example, would delivery firms subject to minimal oversight observe laws barring delivery to a particular city or county, or in Indian Country?

Another potential disadvantage of this market-oriented approach is geographic inequity. Oregon officials report that the delivery system there only works well in a small number of the most densely populated urban areas of the state. In a further example, California's more open delivery system relies not just on licensed retail cannabis shops but third party firms to provide delivery services. One firm engaged in delivery in California only serves a few of the most densely populated metropolitan areas of California as well. The only system of delivery the WSLCB is aware of that provides viable access to patients outside densely populated urban areas is the Canadian system. Canada has provided effective and equitable home delivery of medical cannabis for years – but has only been able to accomplish this by using the national postal delivery system. Obviously that is not an option in Washington due to federal law and federal control of the postal system.

Finally, this option also suffers the disadvantages of most other options; namely, no system of delivery, however well designed, can ensure producers have an incentive to develop medical product that could be delivered by whatever means.

Option 4: Robust incentives to offer delivery service

The state could seek to create a system which, more than simply authorizing home delivery of medical cannabis to qualified patients, contains strong incentives to actually provide this service. A comprehensive set of such incentivizing components is not offered here in this report. But some ideas are set forth below to illustrate some directions that might be considered. Bold departures from current law might be necessary to create sufficiently powerful incentives to stimulate the desired market response. Examples are offered here to stimulate further thinking about additional incentives that might be considered. They are for purposes of illustration, and are not endorsed by WSLCB at this time.

- Exempt medical marijuana deliveries from all taxes
- Grant monopolies for delivery within given regions to a single firm

- Require retail licensees to offer delivery services if they have a medical endorsement
- Offer retailers or delivery firms a partial state B & O tax exemption to offset some delivery costs
- Reduce license fees for retailers providing delivery service
- Authorize delivery of recreational cannabis products to expand the potential market
- Create revenue sharing opportunities for local governments that allow home delivery to patients within their jurisdictions

Advantages

A program built on a foundation of strong incentives has the best chance of making home delivery of medical cannabis for authorized patients in Washington actually feasible for companies in the industry to provide. This may be the only option outlined that could make home delivery a realistic prospect for many patients across the state.

While it may be difficult, it seems possible that such a system could be accompanied by at least some meaningful level of oversight and enforcement provisions. Thus, the risks of youth access, diversion, criminal activity, and related public safety concerns could be reduced at least relative to some other options.

Disadvantages

This option would be relatively costly for the state, both through higher expenditures on enforcement efforts to achieve compliance and possibly through lost revenue, if incentives are provided to make it more financially attractive for businesses to provide this service.

A system along these lines might also be relatively disruptive for the rest of the regulated cannabis industry and create equity concerns. For example, if medical product delivered to the home were exempted from the excise tax, patients might argue the excise tax should be lifted from products obtained directly at retail stores. Consideration of a state tax exemption for firms providing delivery will likely stimulate many demands from advocates and the industry for additional tax exemptions. Certain regulatory options would be difficult to implement on an equitable basis, such as the granting of a monopoly over delivery in a given area. Imposing delivery requirements on retailers with medical endorsements could drive them out of the medical market entirely or impose significant burdens on the operation of their businesses.

Recommendations and Conclusions

The WSLCB does not embrace or necessarily recommend any of the four options described in this report. Instead, the agency defers to the Legislature and the Governor as to the ultimate policy choice. However, certain cautions and preferences are shared below based on the

agency's experience with and expertise in cannabis industry regulation and oversight, as well as the commitment to public safety.

Options 1 and 2 present relatively low levels of concern for the agency. While the status quo is inadequate for certain patients in need of medical cannabis, the current challenges for youth access, diversion, and so forth at least will not be made worse. Option 2 also presents little risk relative to current conditions, *provided the necessary increase in support for expanded enforcement activities is adequately funded*. Option 2 offers a small chance patients with mobility challenges could benefit, though the cost/benefit ratio is not necessarily attractive. If enforcement resources are expanded, and the industry does not respond with increased production of medical products and widespread availability of delivery services on offer, then the result could be that little is achieved despite expenditure of resources.

Option 3 presents much greater risk to public safety and is therefore the least attractive to the agency as far as it is defined in this report. The federal policy climate surrounding cannabis makes the current period and near-term future not a particularly good time to embrace the risk of home delivery without strong oversight and enforcement.

Option 4 presents the greatest degree of uncertainty. Concerns related to public safety or other issues are difficult to identify without a more definitive set of policy choices determined. Among the many highly speculative potential outcomes, we could hypothesize that if patients were exempt from paying the excise tax, many more might choose to register in the database and migrate to the state-regulated market from illicit market sources.

Any of the options outlined in this report, other than the Status Quo option, could serve as a starting point for creating a delivery system. The WSLCB looks forward to working with policymakers, law enforcement, stakeholders, patients, and advocates in structuring a system of home delivery of medical cannabis, should that be a goal in the Legislature and the Governor's Office. A principle the agency wishes to once again emphasize is that delegating the more specific design requirements of the system to the rule making process provides important flexibility and allows for deliberative consideration of tradeoffs through collaborative discussions with stakeholders, regulators from other states, and a variety of experts.

VIII. Appendices

Appendix A: About this Report

Methods

The WSLCB employed a variety of a strategies in order to thoroughly conduct this study. The WSLCB reached out to a number of states, as well as Canada, already permitting home delivery of medical or recreational cannabis in order to gather information about their regulatory structures and policy challenges. The WSLCB actively sought stakeholder engagement through, among other steps, holding a public meeting on June 19, 2018 to gather stakeholders and discuss concerns and stakeholder suggestions. Feedback was obtained from the cannabis industry, including industry groups such as CORE (Cannabis Organization of Retail Establishments), and The Cannabis Alliance, and Washington NORML. The medical community was also in attendance, including medical advocacy groups like the Cannabis Advocacy Coalition. THE WSLCB further consulted with the prevention and public health community, local academic researchers with cannabis expertise, and state and local law enforcement officials. Public feedback was collected through the meeting, as well as by phone conversation, in-person meetings, and email correspondence. The WSLCB further consulted with the Department of Health (DOH), which is charged with managing the database of authorized medical patients in Washington State.

Internally, the WSLCB reached out to divisions within the agency that may be impacted by the establishment of an endorsement for retail licenses that permits the home delivery of cannabis to medical patients; namely, in the Enforcement, Licensing and Finance divisions, as well as the Marijuana Examiners Office. Further, the WSLCB used historical data from the marijuana traceability system to estimate the size of the medical marijuana marketplace and analyze the fiscal feasibility of such an endorsement. Additionally, the agency collected and reviewed academic research and other literature on medical marijuana, and pharmaceutical delivery, among other topics, to further supplement the report.

Research on Medication Delivery

There was no academic research found in regard to the delivery of medical cannabis. However, there is research available on medication delivery in general – specifically, research on the delivery of antiretroviral medication to patients with HIV. One study indicated that overall patient satisfaction with delivery service was high, reported at 81 percent. However, some limitations to the delivery service included failure to deliver within the agreed time slot (23 percent), and deliveries to the incorrect address (on two occasions).¹¹ Given the federally illicit nature of cannabis products, delivery to an incorrect address or failure to deliver within the

agreed upon time could be particularly problematic. Another study on the delivery of antiretroviral medications found that while patients who received the service rated the service as excellent or very good (95 percent), a high number of patients (83 percent) felt concerns relating to the confidentiality of medication home delivery.¹²

Citations

Citations

1. The National Academies of Sciences, E, Medicine (2017). *The health effects of cannabis and cannabinoids. The current state of evidence and recommendation for research*. Washington, D.C.: National Academies Press.
2. Drug Enforcement Administration, Department of Justice. *Schedules of Controlled Substances: Placement in Schedule V of Certain FDA-Approved Drugs Containing Cannabidiol; Corresponding Change to Permit Requirements*. 21 CFR Parts 1308, 1312. Federal Register. Vol. 83, No. 189. September 2018/Rules and Regulations.
3. Lisdahl KM, Gilbert ER, Wright NE, Shollenbarger S. Dare to delay? The impacts of adolescent alcohol and marijuana use onset on cognition, brain structure, and function. *Front Psychiatry*. 2013; 4(July):53.doi: 10.3389/fpsyt.2013.00053 [PubMed: 23847550]
4. Memorandum for All United States Attorneys: Guidance Regarding Federal Marijuana Enforcement, Office of the Deputy Attorney General (August 29, 2013).
5. Sznitman, Sharon. Do recreational cannabis users, unlicensed and licensed medical cannabis users form distinct groups? *International Journal of Drug Policy*. 2017. V. 42 (15-21).
6. Title 16, California Code of Regulations, Division 42 – BCC, Bureau of Cannabis Control, Sec. 5414-542)
7. Nevada Administrative Code – NAC Chapter 453A Sec. 150-153
8. See New York state regulations, Title 10 NYCRR Section 1004.21(c)
9. See Massachusetts state regulations for the Department of Public Health, 105 CMR 725.105(F) and 110(E)
10. See New Mexico state regulations of the Department of Health, Medical Cannabis Program, Chapter 34, Part 4, Section 7.34.4.1-17
11. Penn, M. Paterson, J., Fernandes, A., Horn, K. Patient Satisfaction with Home Delivery Service for Antiretroviral Medication. *Sexually Transmitted Infections*. 2015; 91 (75).
12. Castelino, S., Hurley, L., Malawasi, T., Osborne, A., Offering a home delivery service for HIV medication can increase patient choice. *Pharmacy in Practice*. 2009 (35-39).

Appendix B: Cannabis Enforcement Priorities

While the Cole Memo, the Wilkinson Memo regarding Indian Country, and other guidance offered by the Federal Government under the previous Administration has been rescinded by the current Administration, the WSLCB continues to use enforcement priorities from those documents as a critical guideline for policy development, licensing and regulatory oversight as well as enforcement prioritization. Below is a copy of the Cole memo provided for reference.

U.S. Department of Justice
Office of the Deputy Attorney General
The Deputy Attorney General
Washington, D.C. 20530
August 29, 2013

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS
FROM: James M. Cole —
Deputy Attorney General
SUBJECT: Guidance Regarding Marijuana Enforcement

In October 2009 and June 2011, the Department issued guidance to federal prosecutors concerning marijuana enforcement under the Controlled Substances Act (CSA). This memorandum updates that guidance in light of state ballot initiatives that legalize under state law the possession of small amounts of marijuana and provide for the regulation of marijuana production, processing, and sale. The guidance set forth herein applies to all federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning marijuana in all states.

As the Department noted in its previous guidance, Congress has determined that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. The Department of Justice is committed to enforcement of the CSA consistent with those determinations. The Department is also committed to using its limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent, and rational way. In furtherance of those objectives, as several states enacted laws relating to the use of marijuana for medical purposes, the Department in recent years has focused its efforts on certain enforcement priorities that are particularly important to the federal government:

- » Preventing the distribution of marijuana to minors;
- » Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;

- » Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- « Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;

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Subject: Guidance Regarding Marijuana Enforcement
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- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;

- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

These priorities will continue to guide the Department's enforcement of the CSA against marijuana-related conduct. Thus, this memorandum serves as guidance to Department attorneys and law enforcement to focus their enforcement resources and efforts, including prosecution, on persons or organizations whose conduct interferes with any one or more of these priorities, regardless of state law. ¹

Outside of these enforcement priorities, the federal government has traditionally relied on states and local law enforcement agencies to address marijuana activity through enforcement of their own narcotics laws. For example, the Department of Justice has not historically devoted resources to prosecuting individuals whose conduct is limited to possession of small amounts of marijuana for personal use on private property. Instead, the Department has left such lower-level or localized activity to state and local authorities and has stepped in to enforce the CSA only when the use, possession, cultivation, or distribution of marijuana has threatened to cause one of the harms identified above.

The enactment of state laws that endeavor to authorize marijuana production, distribution, and possession by establishing a regulatory scheme for these purposes affects this traditional joint federal-state approach to narcotics enforcement. The Department's guidance in this memorandum rests on its expectation that states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests. A system adequate to that task must not only contain robust controls and procedures on paper; it must also be effective in practice.

Jurisdictions that have implemented systems that provide for regulation of marijuana activity

¹ These enforcement priorities are listed in general terms; each encompasses a variety of conduct that may merit civil or criminal enforcement of the CSA. By way of example only, the Department's interest in preventing the distribution of marijuana to minors would call for enforcement not just when an individual or entity sells or transfers marijuana to a minor, but also when marijuana trafficking takes place near an area associated with minors; when marijuana or marijuana-infused products are marketed in a manner to appeal to minors; or when marijuana is being diverted, directly or indirectly, and purposefully or otherwise, to minors.

must provide the necessary resources and demonstrate the willingness to enforce their laws and regulations in a manner that ensures they do not undermine federal enforcement priorities.

In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above. Indeed, a robust system may affirmatively address those priorities by, for example, implementing effective measures to prevent diversion of marijuana outside of the regulated system and to other states, prohibiting access to marijuana by minors, and replacing an illicit marijuana trade that funds criminal enterprises with a tightly regulated market in which revenues are tracked and accounted for. In those circumstances, consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity. If state enforcement efforts are not sufficiently robust to protect against the harms set forth above, the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms.

The Department's previous memoranda specifically addressed the exercise of prosecutorial discretion in states with laws authorizing marijuana cultivation and distribution for medical use. In those contexts, the Department advised that it likely was not an efficient use of federal resources to focus enforcement efforts on seriously ill individuals, or on their individual caregivers. In doing so, the previous guidance drew a distinction between the seriously ill and their caregivers, on the one hand, and large-scale, for-profit commercial enterprises, on the other, and advised that the latter continued to be appropriate targets for federal enforcement and prosecution. In drawing this distinction, the Department relied on the common-sense judgment that the size of a marijuana operation was a reasonable proxy for assessing whether marijuana trafficking implicates the federal enforcement priorities set forth above.

As explained above, however, both the existence of a strong and effective state regulatory system, and an operation's compliance with such a system, may allay the threat that an operation's size poses to federal enforcement interests. Accordingly, in exercising prosecutorial discretion, prosecutors should not consider the size or commercial nature of a marijuana operation alone as a proxy for assessing whether marijuana trafficking implicates the Department's enforcement priorities listed above. Rather, prosecutors should continue to review marijuana cases on a case-by-case basis and weigh all available information and evidence, including, but not limited to, whether the operation is demonstrably in compliance with a strong and effective state regulatory system. A marijuana operation's large scale or for-profit nature may be a relevant consideration for assessing the extent to which it undermines a particular federal enforcement priority. The primary question in all cases - and in all jurisdictions - should be whether the conduct at issue implicates one or more of the enforcement priorities listed above.

Memorandum for All United States Attorneys
Subject: Guidance Regarding Marijuana Enforcement

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As with the Department's previous statements on this subject, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion. This memorandum does not alter in any way the Department's authority to enforce federal law, including federal laws relating to marijuana, regardless of state law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of the CSA. Even in jurisdictions with strong and effective regulatory systems, evidence that particular conduct threatens federal priorities will subject that person or entity to federal enforcement action, based on the circumstances. This memorandum is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. It applies prospectively to the exercise of prosecutorial discretion in future cases and does not provide defendants or subjects of enforcement action with a basis for reconsideration of any pending civil action or criminal prosecution. Finally, nothing

g herein precludes investigation or prosecution, even in the absence of any one of the factors listed above, in particular circumstances where investigation and prosecution otherwise serves an important federal interest.

cc: Mythili Raman
Acting Assistant Attorney General, Criminal Division

Loretta E. Lynch
United States Attorney
Eastern District of New York
Chair, Attorney General's Advisory Committee

Michele M. Leonhart
Administrator
Drug Enforcement Administration

H. Marshall Jarrett
Director
Executive Office for United States Attorneys

Ronald T. Hosko
Assistant Director
Criminal Investigative Division
Federal Bureau of Investigation

DRAFT

Appendix C: Legislative Mandate

Home Delivery Study Charge – ESSB 6032, Section 140

"(8) (a) Within amounts appropriated in this section, the state liquor and cannabis board shall conduct a study regarding the development and implementation of a system for the home delivery of medical marijuana products to qualifying medical marijuana patients by licensed medical marijuana retailers. The board shall examine the legal and regulatory issues to be addressed in order to provide safe home delivery and to ensure effective monitoring of the delivery process to minimize the likelihood of illicit activity.

(b) The board shall consult with the department of health, industry representatives, local government officials, law enforcement officials, and any other person or entity deemed necessary to complete the study.

(c) In the course of the study, the board shall consider the following:

(i) Eligibility requirements for marijuana retailers applying for a medical marijuana delivery endorsement;

(ii) Verification procedures regarding age, identity, and registration in the medical marijuana authorization database with respect to the medical marijuana patient receiving delivery;

(iii) Qualifications for, and the training of, persons delivering medical marijuana products on behalf of the medical marijuana retailer;

(iv) Methods of ordering and payment;

(v) Maintaining the integrity of the marijuana traceability system during the course of the delivery process;

(vi) Safe and secure transportation of marijuana products from the retailer to the purchaser, including delivery vehicle requirements;

(vii) Methods of ensuring that a retailer's delivery employees and delivery system are in compliance with regulatory requirements;

(viii) Medical marijuana deliveries by retailers operating out of Indian country; and

(ix) Civil penalties and administrative actions for regulatory violations by a retailer holding a medical marijuana delivery endorsement

d) By December 1, 2018, the board must report to the legislature and the appropriate committees its findings and recommendations regarding the implementation of a medical marijuana home delivery system."