



**CO L O R A D O**

**Department of  
Regulatory Agencies**

Colorado Office of Policy, Research &  
Regulatory Reform

**2018 Sunset Reviews:  
Colorado Medical Marijuana Code  
Colorado Retail Marijuana Code**

*October 15, 2018*



**COLORADO**

**Department of  
Regulatory Agencies**

Executive Director's Office

October 15, 2018

Members of the Colorado General Assembly  
c/o the Office of Legislative Legal Services  
State Capitol Building  
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado General Assembly established the sunset review process in 1976 as a way to analyze and evaluate regulatory programs and determine the least restrictive regulation consistent with the public interest. Since that time, Colorado's sunset process has gained national recognition and is routinely highlighted as a best practice as governments seek to streamline regulation and increase efficiencies.

Section 24-34-104(5)(a), Colorado Revised Statutes (C.R.S.), directs the Department of Regulatory Agencies to:

- Conduct an analysis of the performance of each division, board or agency or each function scheduled for termination; and
- Submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination.

The Colorado Office of Policy, Research and Regulatory Reform (COPRRR), located within my office, is responsible for fulfilling these statutory mandates. Accordingly, COPRRR has completed the evaluation of the Colorado Medical and Retail Marijuana Codes. I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2019 legislative committee of reference.

The report discusses the question of whether there is a need for the regulation provided under Articles 11 and 12 of Title 44, C.R.S. The report also discusses the effectiveness of the Executive Director of the Department of Revenue in carrying out the intent of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Marguerite Salazar  
Executive Director





# COLORADO

## Department of Regulatory Agencies

Colorado Office of Policy, Research &  
Regulatory Reform

### 2018 Sunset Review Colorado Medical Marijuana Code Colorado Retail Marijuana Code

#### SUMMARY

##### ***What is regulated?***

The Colorado Medical Marijuana Code (Medical Code) provides the regulatory structure for the commercial medical marijuana industry. The Colorado Retail Marijuana Code (Retail Code) provides the regulatory structure for the commercial retail marijuana industry. Both codes provide for licensure of industry participants, production management and safety issues surrounding marijuana sold in these commercial markets. Both codes are administered and enforced by the Executive Director of the Colorado Department of Revenue (Executive Director).

##### ***Why is it regulated?***

Although Amendments 20 and 64 to the state's constitution legalized medical and retail marijuana, the substance remains illegal under federal law. As such, there are no federal consumer protections in place regarding marijuana and marijuana products. Additionally, Amendment 64 requires a regulatory structure for retail marijuana.

##### ***Who is regulated?***

In fiscal year 16-17, the Executive Director licensed 1,001 marijuana stores/centers, 1,457 marijuana cultivation facilities, 527 marijuana products manufacturing facilities, 27 marijuana testing facilities, 8 marijuana operators, 3 marijuana transporters and approximately 35,000 marijuana industry owners and employees.

##### ***How is it regulated?***

All individuals who own or work for a licensed marijuana business must pass a fingerprint-based criminal history background check, demonstrate Colorado residency and demonstrate financial responsibility. Marijuana businesses must also document their funding sources and ownership structure. All marijuana must be tested for certain contaminants and packaged and labeled in accordance with the provisions of the codes and the rules promulgated under them.

##### ***What does it cost?***

In fiscal year 16-17, the Executive Director employed 88 full-time equivalent employees and spent approximately \$8.8 million to administer and enforce both codes.

##### ***What disciplinary activity is there?***

In 2017, the Executive Director revoked 4 licenses, denied 84 license applications, entered into 75 stipulated agreements, issued 30 summary suspensions, obtained 5 assurances of voluntary compliance, issued 12 orders to show cause and issued 62 fines totaling approximately \$1.05 million.

## KEY RECOMMENDATIONS

### ***Continue the Retail Code for nine years, until 2028.***

Given marijuana's status under federal law, none of the consumer protections typically afforded by the federal government are available to retail marijuana. Additionally, the state's constitution requires a regulatory structure substantially similar to that provided by the Retail Code. Therefore, the General Assembly should continue the Retail Code for nine years, until 2028.

### ***Continue the Medical Code for nine years, until 2028.***

Given marijuana's status under federal law, none of the consumer protections typically afforded by the federal government are available to medical marijuana. Consumer protections are particularly necessary considering that medical marijuana is potentially consumed by those with compromised immune systems.

### ***Integrate the two codes, maintaining medical and retail marijuana and retaining certain differences.***

Maintaining two distinct codes that regulate the same substance in a substantially similar manner is inefficient and creates compliance difficulties. Therefore, the two codes should be integrated into a single code that builds on the provisions of the Retail Code, yet retains certain differences.

## METHODOLOGY

As part of this review, Colorado Office of Policy, Research and Regulatory Reform staff conducted a literature review; interviewed stakeholders and Marijuana Enforcement Division staff and staff at the Colorado Department of Public Health and Environment; toured a marijuana cultivation facility; and reviewed Colorado statutes and rules.

## MAJOR CONTACTS MADE DURING THIS REVIEW

CannAbility Foundation  
Cannabis Business Alliance  
Cannabis Clinicians Colorado  
Cannabis Consumers Coalition  
Cannabis Patients Alliance  
City and County of Denver  
City of Aurora  
City of Boulder  
City of Colorado Springs  
City of Commerce City  
City of Fort Collins  
Colorado Counties, Inc.  
Colorado Attorney General's Office  
Colorado Department of Public Health & Environment

Colorado Department of Revenue  
Colorado District Attorneys' Council  
Colorado Municipal League  
Colorado Psychiatric Association  
Drug Policy Alliance  
Kempe Foundation  
Law Enforcement Action Partnership  
Marijuana Industry Group  
Minority Cannabis Business Association  
Servicios De La Raza  
Smart Colorado  
Southern Colorado Cannabis Council  
Veterans for Medical Cannabis Access

### **What is a Sunset Review?**

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are prepared by:  
Colorado Department of Regulatory Agencies  
Colorado Office of Policy, Research and Regulatory Reform  
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# Background

## Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) within the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria<sup>1</sup> and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;

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<sup>1</sup> Criteria may be found at § 24-34-104, C.R.S.

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- Whether the agency through its licensing or certification process imposes any disqualifications on applicants based on past criminal history and, if so, whether the disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subparagraph (i) of paragraph (a) of subsection (8) of this section shall include data on the number of licenses or certifications that were denied, revoked, or suspended based on a disqualification and the basis for the disqualification; and
  - Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

## Types of Regulation

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation.

### Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection - only those individuals who are properly licensed may use a particular title(s) - and practice exclusivity - only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.



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## Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

## Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements - typically non-practice related items, such as insurance or the use of a disclosure form - and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

## Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency - depending upon the prescribed preconditions for use of the protected title(s) - and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

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## Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

## **Sunset Process**

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review on COPRRR's website at: [www.dora.colorado.gov/opr](http://www.dora.colorado.gov/opr).

The functions of the Executive Director of the Department of Revenue (Executive Director), as enumerated in Articles 11 and 12 of Title 44, Colorado Revised Statutes (C.R.S.),<sup>2</sup> shall terminate on September 1, 2019, unless continued by the General Assembly. During the year prior to this date, it is the duty of COPRRR to conduct an analysis and evaluation of the Executive Director and staff of the Marijuana Enforcement Division (MED) pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation should be continued and to evaluate the performance of the Executive Director and MED staff. During this review, the Executive Director must demonstrate that the program serves the public interest. COPRRR's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

## **Methodology**

As part of this review, COPRRR staff conducted a literature review; interviewed stakeholders, MED staff and staff at the Colorado Department of Public Health and Environment (CDPHE); toured a marijuana cultivation facility; and reviewed Colorado statutes and rules.

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<sup>2</sup> House Bill 18-1023 recodified these articles and placed them in a new Title 44. In order to avoid confusion and erroneous citations and references, this sunset report consistently refers to the statutory provisions as if they remained in Title 12, C.R.S.

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## Profile of Marijuana

The term “marijuana” refers to the “dried leaves, flowers, stems and seeds of the *Cannabis sativa* or *Cannabis indica* plant.”<sup>3</sup>

The marijuana plant contains over 100 chemicals called cannabinoids,<sup>4</sup> which are similar to endocannabinoids. Endocannabinoids are produced by the human body and play a role in regulating pleasure, memory, thinking, concentration, body movement, sensory and time perception, appetite and pain.<sup>5</sup> When cannabinoids are ingested, they act on specific molecular targets on brain cells, called cannabinoid receptors, which can overactivate the endocannabinoid system, resulting in the “high” and other effects users often experience.<sup>6</sup>

Of the over 100 cannabinoids known to exist, two are of primary therapeutic interest—cannabidiol (CBD) and delta-9-tetrahydrocannabinol (THC). These two cannabinoids are found in varying ratios in the marijuana plant. THC, the more widely known of the two because of its mind-altering effects, not only stimulates appetite and reduces nausea, but it may also decrease pain, inflammation and spasticity. CBD is non-psychoactive and may be useful in reducing pain and inflammation, controlling epileptic seizures and possibly even treating mental illness and addictions.<sup>7</sup>

As a result of these characteristics, retail marijuana (commonly referred to as “recreational marijuana” or “adult-use marijuana”) typically contains higher ratios of THC than CBD.

Medical marijuana is most typically used to provide relief from muscle spasms and chronic pain, reduce interocular pressure inside the eye, suppress nausea and stimulate appetite. Patients suffering from acquired immune deficiency syndrome (AIDS), glaucoma, cancer, multiple sclerosis, epilepsy, chronic pain, anxiety, depression and obsession are most frequently associated with medical marijuana use.<sup>8</sup>

Colorado’s experience with medical marijuana began in earnest on December 28, 2000, when Amendment 20 took effect. In short, Amendment 20 authorized those with certain debilitating medical conditions to grow, possess and use limited amounts of marijuana.<sup>9</sup> Amendment 20 envisioned patients either growing their own marijuana (up to six plants, or more if medically necessary)<sup>10</sup> or forming relationships with primary caregivers who

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<sup>3</sup> National Institute on Drug Abuse. *Marijuana: What is marijuana?* Retrieved May 9, 2018, from [www.drugabuse.gov/publications/drugfacts/marijuana](http://www.drugabuse.gov/publications/drugfacts/marijuana)

<sup>4</sup> National Institute on Drug Abuse. *Marijuana as Medicine: What is medical marijuana?* Retrieved May 9, 2018, from [www.drugabuse.gov/publications/drugfacts/marijuana-medicine](http://www.drugabuse.gov/publications/drugfacts/marijuana-medicine)

<sup>5</sup> National Institute on Drug Abuse. *Marijuana as Medicine: What is medical marijuana?* Retrieved May 9, 2018, from [www.drugabuse.gov/publications/drugfacts/marijuana-medicine](http://www.drugabuse.gov/publications/drugfacts/marijuana-medicine)

<sup>6</sup> National Institute on Drug Abuse. *Marijuana: What is marijuana?* Retrieved May 9, 2018, from [www.drugabuse.gov/publications/drugfacts/marijuana](http://www.drugabuse.gov/publications/drugfacts/marijuana)

<sup>7</sup> National Institute on Drug Abuse. *Marijuana as Medicine: What is medical marijuana?* Retrieved May 9, 2018, from [www.drugabuse.gov/publications/drugfacts/marijuana-medicine](http://www.drugabuse.gov/publications/drugfacts/marijuana-medicine)

<sup>8</sup> Disabled World. *Medical Marijuana: Legalities & Health Condition Uses.* Retrieved May 9, 2018, from [www.disabled-world.com/medical/pharmaceutical/marijuana](http://www.disabled-world.com/medical/pharmaceutical/marijuana)

<sup>9</sup> Colo. Const. Art. XVIII, § 14.

<sup>10</sup> Colo. Const. Art. XVIII, § 14(4).

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grow the plants for their patients and who bear “significant responsibility for managing the well-being of” their patients.<sup>11</sup>

Colorado’s medical marijuana environment has evolved dramatically in the years since Amendment 20’s passage. Although the intimate, one-on-one relationship of the primary caregiver and patient continues, it has been subsumed by the commercialization of marijuana in the state.

Patients can now obtain medical marijuana from medical marijuana centers (historically known as dispensaries). Many medical marijuana centers will provide discounts or special pricing to those patients who designate a particular medical marijuana center as their “primary center.” The cultivation facilities associated with these medical marijuana centers, in turn, may legally grow marijuana for their registered patients.

Regardless of whether a patient grows his or her own medical marijuana or obtains it from a primary caregiver or a medical marijuana center, the patient must first obtain, from a Colorado-licensed physician, a diagnosis of suffering from one of the enumerated debilitating or disabling medical conditions:<sup>12</sup>

- Cancer
- Glaucoma
- Positive status for human immunodeficiency virus or AIDS
- Cachexia
- Severe pain
- Severe nausea
- Seizures
- Persistent muscle spasms
- Post-traumatic stress disorder

The physician must also find that the patient “might benefit from the medical use of marijuana.”<sup>13</sup>

The patient may then apply to CDPHE for a medical marijuana registry identification card, which, in turn, is presented to law enforcement as needed, the patient’s primary caregiver and the medical marijuana center from which the patient obtains medical marijuana.

In 2012, Colorado voters passed Amendment 64 to the state’s constitution, which, in short, legalized the use and possession of marijuana for those 21 and older, and stipulated that marijuana should be taxed and regulated in a manner similar to alcohol.<sup>14</sup> Additionally, Amendment 64 provided the general outlines for:

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<sup>11</sup> Colo. Const. Art. XVIII, § 14(1)(f).

<sup>12</sup> Colo. Const. Art. XVIII, §§ 14 (1)(a)(I and II) and § 25-1.5-106(2)(a.7), C.R.S.

<sup>13</sup> Colo. Const. Art. XVIII, § 14(2)(a)(II).

<sup>14</sup> Colo. Const. Art. XVIII, §§ 16(1)(a) and (1)(b).

- The regulation of industrial hemp;<sup>15</sup>
- The personal use of marijuana;<sup>16</sup> and
- The regulation of marijuana business establishments, including retail stores, cultivation facilities, manufacturing facilities and testing facilities.<sup>17</sup>

While the focus of this sunset report is on the regulation of medical and retail marijuana business establishments, it is important to remember that both Amendment 20 and Amendment 64 authorize individuals to grow, possess, use and transport their own marijuana.

Marijuana is now available in a variety of forms. The dried buds and leaves of the cannabis plant may be smoked through a variety of paraphernalia, including joints, pipes or bongs. The cannabinoid crystals may also be harvested and dried to form hash, which can also be smoked. Cannabinoid oils can be extracted from the cannabis plant and used to create tinctures, ointments and concentrates, which can, in turn be infused into an infinite number of products. These are but a few examples.

Table 1 illustrates the volume of marijuana sold through Colorado’s licensed retail and medical marijuana establishments in 2017.

**Table 1**  
**Retail and Medical Marijuana Sales: 2017<sup>18</sup>**

Form of Marijuana	Retail	Medical	Total
Flower/Bud (pounds)	238,149	172,994	411,143
Marijuana Infused Edibles (units)	9,295,329	1,851,098	11,146,427
Marijuana Infused Non-edibles (units)	843,646	210,823	1,054,469
Marijuana Concentrate (pounds)	13,798	14,092	27,890
Marijuana Concentrate (units)	3,773,147	786,450	4,559,597

To date, all but four states have legalized medical marijuana in some manner, and nine have legalized the recreational use of marijuana.<sup>19</sup>

Although both medical and retail marijuana are widely available in Colorado, all forms of marijuana remain illegal under federal law.

<sup>15</sup> Colo. Const. Art. XVIII, § 16(1)(c).

<sup>16</sup> Colo. Const. Art. XVIII, § 16(3).

<sup>17</sup> Colo. Const. Art. XVIII, § 16(4).

<sup>18</sup> *MED 2017 Annual Update*, Colorado Department of Revenue, Marijuana Enforcement Division (May 17, 2018), pp. 10 and 11.

<sup>19</sup> National Conference of State Legislatures. *Marijuana Deep Dive*. Retrieved May 23, 2018, from [www.ncsl.org/bookstore/state-legislatures-magazine/marijuana-deep-dive.aspx](http://www.ncsl.org/bookstore/state-legislatures-magazine/marijuana-deep-dive.aspx)

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# Legal Framework

## History of Regulation

On November 7, 2000, the voters of Colorado passed Amendment 20 to the state's constitution, effectively decriminalizing the medical use of the drug. Amendment 20 became effective on December 28, 2000.

The provisions of Amendment 20 create an affirmative defense for any patient, or the patient's primary caregiver, whose physician has diagnosed the patient as having a debilitating medical condition, and whose physician has advised the patient that the patient might benefit from the use of medical marijuana.<sup>20</sup>

Amendment 20 also provides for the creation of a registry of medical marijuana patients, including requirements for inclusion on the registry and the issuance of registry identification cards.<sup>21</sup>

Amendment 20 generally limits possession of medical marijuana to no more than two ounces of marijuana in a useable form and no more than six plants. However, the patient or the patient's primary caregiver may raise as an affirmative defense that more than these general limitations are medically necessary to address the patient's condition,<sup>22</sup> when recommended by a physician.

Patients must be at least 18 years old. Those under 18 may use medical marijuana only when two physicians recommend its use and the patients' parents consent.<sup>23</sup>

No health insurance carrier, neither public nor private, is required to provide reimbursements for medical marijuana,<sup>24</sup> and no employer is required to accommodate the use of medical marijuana in the workplace.<sup>25</sup>

Amendment 20 directs the Governor to designate a "state health agency" to implement the constitutional provision,<sup>26</sup> which the Governor did in Executive Order D 001 01, designating the Colorado Department of Public Health and Environment (CDPHE) as the state health agency. The General Assembly, in passing House Bill 01-1371, granted CDPHE broad rule-making authority to promulgate the registry application forms, the processes for issuing medical marijuana registry cards and the manner in which CDPHE could consider adding to the list of debilitating medical conditions outlined in Amendment 20.

In the years that followed, local governments began licensing medical marijuana dispensaries.

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<sup>20</sup> Colo. Const. Art. XVIII, § 14(2)(a).

<sup>21</sup> Colo. Const. Art. XVIII, §§ 14(2)(b) and (3).

<sup>22</sup> Colo. Const. Art. XVIII, § 14(4).

<sup>23</sup> Colo. Const. Art. XVIII, § 14(6).

<sup>24</sup> Colo. Const. Art. XVIII, § 14(10)(a).

<sup>25</sup> Colo. Const. Art. XVIII, § 14(10)(b).

<sup>26</sup> Colo. Const. Art. XVIII, § 14(7).

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On October 19, 2009, the United States Department of Justice (DOJ) issued what has come to be known as the “Ogden Memo,” which, while recognizing the plenary authority of the various United States Attorneys, directed they,

should not focus federal resources in [their] states on individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana.<sup>27</sup>

Thus, the 2010 legislative session began within the context of Colorado’s local governments having created a patchwork of regulations and the federal government having indicated that it might not enforce federal law with fervor.

The two major marijuana-related pieces of legislation passed in 2010 were Senate Bill 109 and House Bill 1284 (HB 1284). The first defined a “bona fide physician-patient relationship,” more clearly delineating the process physicians must follow when recommending medical marijuana and prohibiting physicians from holding an economic interest in an enterprise that provides or distributes medical marijuana.

House Bill 1284 created the Colorado Medical Marijuana Code (Medical Code), which is one of the subjects of this sunset report. Among other things, HB 1284 created the framework for the licensing of medical marijuana centers, their cultivation operations, medical marijuana-infused products (MMIPs) manufacturers and the individuals who work in such facilities. The bill named the Executive Director of the Colorado Department of Revenue (Executive Director) as the state licensing authority to administer the Medical Code.

The bill also provided that those who were operating established, locally approved businesses as of July 1, 2010, could continue to do so, so long as they applied for a state license by August 1, 2010. Finally, licensees had to be vertically integrated such that a medical marijuana center had to sell 70 percent of what its affiliated cultivation facility grew and could buy no more than 30 percent of what it sold from a non-affiliated medical marijuana center.

House Bill 1284 had statewide applicability, unless a local government “opts out” and bans medical marijuana centers, cultivation operations and MMIPs manufacturers. The bill further refined the role of primary caregivers, by, among other things, providing that primary caregivers may, in general, care for no more than five patients at any time. It also banned primary caregivers from having employees and from joining together to cultivate marijuana.

House Bill 11-1043, among other things, essentially placed a moratorium on new medical marijuana licenses by providing that those who had applied for a license by July 1, 2010, could continue to operate, but that no new applications could be submitted until July 1,

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<sup>27</sup> U.S. Department of Justice. *Memorandum for Selected United States Attorneys, from David W. Ogden, Deputy Attorney General, regarding Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana*, October 19, 2009. Retrieved July 24, 2018, from [www.justice.gov/archives/opa/blog/memorandum-selected-united-state-attorneys-investigations-and-prosecutions-states](http://www.justice.gov/archives/opa/blog/memorandum-selected-united-state-attorneys-investigations-and-prosecutions-states)



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2012. The bill also limited manufacturers of marijuana-infused products to no more than 500 marijuana plants and created procedures for the destruction of any unauthorized medical marijuana or MMIPs. Finally, the bill required caregivers who cultivate medical marijuana for their patients to register the location of that cultivation with the Executive Director.

House Bill 11-1250 required that MMIPs be sold in packaging that is designed to be significantly difficult for children under five years of age to open.

In November 2012, the voters of Colorado legalized the recreational use of marijuana. The ballot initiative, known as Amendment 64, took effect on December 10, 2012, requiring the Executive Director to begin accepting license applications for retail marijuana stores, cultivation operations and marijuana products manufacturers on October 1, 2013. Though some of the terminology in this amendment differed from that used in HB 1284, such as “stores” rather than “centers,” the basic licensing structure replicated that contained in the Medical Code.

House Bill 13-1317 (HB 1317) implemented Amendment 64 by creating the Colorado Retail Marijuana Code (Retail Code), which is one of the subjects of this sunset report. In so doing, the General Assembly again named the Executive Director as the state licensing authority to administer the Retail Code, and provided for the licensing of retail marijuana stores, retail marijuana cultivation facilities, retail marijuana product manufacturers, retail marijuana testing facilities and the individuals who own and work in them. The regulatory structures created in the Retail and Medical Codes operate parallel to one another.

Additionally, the bill continued the Medical Code’s concept of vertical integration in the retail marijuana industry, but only through September 30, 2014, at which time, vertical integration in the retail marijuana industry would no longer be required. It also stipulated that until October 1, 2014, only those establishments previously licensed and in good standing under the Medical Code could obtain licensure under the Retail Code. The bill also adopted the Medical Code’s requirement that anyone holding an ownership interest in a marijuana license must have been a Colorado resident for at least two years.

Although the Retail Code imported many of the concepts contained in the Medical Code, the two codes differed in significant ways, particularly with respect to matters such as mandatory testing, labeling and packaging requirements.

House Bill 13-1061 created the parameters for the approval of responsible medical marijuana vendor training programs.

House Bill 13-1238 required the Executive Director to issue medical marijuana licenses upon the successful completion of the state application process, thus obviating the previous practice of withholding state approval until local approvals had been obtained. Under the provisions of this bill, a local licensing authority’s refusal to issue a license became grounds for the Executive Director to revoke the state license, thereby ensuring that both state and local licenses are obtained prior to commencing operations.



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House Bill 14-1122 removed from statute the packaging requirements for medical marijuana, and directed the Executive Director to promulgate rules that are consistent with the federal Poison Prevention Packaging Act of 1970. Further, the bill defined the terms “opaque” and “resealable,” both of which are germane to the packaging of retail and medical marijuana. The bill also authorized retail marijuana licensees and their employees to confiscate fraudulent identification cards and to detain those attempting to use such cards to unlawfully obtain retail marijuana.

House Bill 14-1361 directed that by January 1, 2016, the Executive Director promulgate rules establishing the equivalent of one ounce of retail marijuana flower in various retail marijuana products including retail marijuana concentrate. The bill did not address equivalency for medical marijuana.

House Bill 14-1366 directed that by January 1, 2016, the Executive Director promulgate rules requiring that edible retail marijuana products be clearly identifiable with a standard symbol indicating that they contain marijuana and are not for consumption by children. The bill did not address medical marijuana.

In 2014, the Medical Code underwent its first sunset review. The resulting bill, Senate Bill 15-115, aligned, in many ways, the Medical Code to the Retail Code. In an attempt to coordinate future sunset reviews to provide a comprehensive review of the entire marijuana industry, the bill continued the Medical Code until 2019, which aligned it with the sunset reviews of the Colorado Medical Board and the Medical Marijuana Program administered by CDPHE.

Senate Bill 15-260 imposed, for the first time, testing requirements for medical marijuana and created a new testing laboratory license type under the Medical Code.

Senate Bill 15-196 provided that industrial hemp may be tested by a marijuana testing facility licensed under the Retail Code.

House Bill 15-1283 directed CDPHE to develop, by December 31, 2015, and maintain a marijuana laboratory testing reference library. The bill also directed the Executive Director to promulgate rules creating a process validation testing system for retail marijuana products in serving sizes of 10 milligrams.

House Bill 15-1379 created “permitted economic interests” that provide a pathway for natural persons who are not Colorado residents to invest in licensed marijuana establishments with the opportunity to become owners when they meet either code’s residency requirements.

Finally, House Bill 15-1387 (HB 1387) limited HB 1317’s transferability of medical marijuana to a retail marijuana licensee. After the passage of HB 1387, the only time medical marijuana can be transferred to a retail marijuana licensee is when a medical marijuana cultivation facility converts its license as such into a retail cultivation facility. Transfers between medical marijuana centers and retail stores, and between MMIPs manufacturers and retail product manufacturers are no longer permissible.

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In Senate Bill 16-040, the General Assembly again revisited the issue of who can own a licensed marijuana business, and amended both the Retail and Medical Codes by introducing the concepts of direct beneficial interest owners, indirect beneficial interest owners and qualified limited passive investors, and directed the Executive Director to promulgate rules regarding the parameters and qualifications of such owners. Further, the bill repealed the requirement that owners live in Colorado for two years, explicitly prohibited publicly traded companies from owning licensed marijuana businesses and specified the parameters within which qualified institutional investors could own a marijuana licensee.

In 2015, the Retail Code underwent its first sunset review, culminating in House Bill 16-1261, which, among other things, created the retail marijuana operator and transporter license types, made confidential certain records in the possession of the Executive Director, aligned the testing requirements for retail marijuana to those in place for medical marijuana, repealed from statute retail marijuana labeling requirements and directed the Executive Director to address the issue via rule, and authorized retail marijuana cultivation and retail marijuana products manufacturers to provide performance-based incentives to their employees.

House Bill 16-1041 repealed the requirement that medical and retail marijuana licensees post surety bonds, and House Bill 16-1211 amended both codes to create marijuana transporter license types.

In an attempt to prevent edible marijuana products from enticing children, House Bill 16-1436 directed the Executive Director to promulgate rules prohibiting edible retail and medical marijuana in the shape of a human, animal or fruit. Along similar lines, House Bill 16-1363 directed the Executive Director to promulgate rules prohibiting medical marijuana marketing campaigns that have a high likelihood of reaching those under age 18.

The requirement that retail or medical licensees be Colorado residents was waived, in Senate Bill 17-187, for those deemed to be participating in a marijuana-based workforce development or training program.

Seeking to increase marijuana research, the General Assembly passed House Bill 17-1367, which, among other things, amended the Medical Code to create the marijuana research and development and marijuana research and development cultivation license types.

House Bill 17-1034 amended the Medical Code to create medical marijuana business operator license type, in line with the same license type created in the Retail Code in House Bill 16-1261.

House Bill 18-1422 required all medical and retail marijuana testing facilities to obtain certification from the International Organization for Standardization by January 1, 2019.

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House Bill 18-1259 permitted, within certain limitations, medical and retail marijuana cultivations and manufacturing facilities to provide samples to managers for purposes of quality control and product development.

In House Bill 18-1280, the General Assembly created a system whereby court appointees, such as receivers, personal representatives, guardians and others, can take possession of, operate, manage or control a medical or retail marijuana licensee.

One of the major pieces of marijuana-related legislation in 2018, was House Bill 1381, which eliminated mandatory vertical integration in the medical marijuana industry by July 1, 2019, with a phase-in period commencing on July 1, 2018. The bill also authorized the Executive Director to establish a medical marijuana production management system, which happens to be consistent with the management production system outlined in the Retail Code.

House Bill 18-1389 created a centralized distribution permit to be issued to medical and retail marijuana cultivation licensees, allowing them to store, for not more than 90 days, marijuana, concentrate and infused products for the sole purpose of transfer to a permit holder's commonly-owned medical marijuana center or retail marijuana store.

In Senate Bill 18-271, the General Assembly authorized marijuana research and development licensees and marijuana research and development cultivation licensees to co-locate with medical and retail marijuana manufacturer licensees.

Senate Bill 18-187, directed the Executive Director to establish the conditions under which a medical or retail marijuana licensee can transfer fibrous waste to an unlicensed entity for the purpose of producing industrial fiber products.

Finally, effective October 1, 2018, the Medical and Retail Codes were moved from Title 12, Colorado Revised Statutes (C.R.S.), into a new Title 44, C.R.S., with the passage of House Bill 18-1023. Notwithstanding this recodification, in order to avoid confusion and erroneous citations and references, this sunset report consistently refers to statutory provisions as if they remained in Title 12, C.R.S.

## **Federal Laws and Guidance**

The federal Controlled Substances Act classifies marijuana and the cannabinoid tetrahydrocannabinol (THC) in Schedule I,<sup>28</sup> which means that they have a high potential for abuse, they have no currently accepted medical use in treatment in the United States, and there is a lack of accepted safety for use of them under medical supervision.<sup>29</sup> As such, both substances are illegal under federal law.

Their legal status means that possession of any amount of marijuana is punishable by up to a year in prison and a fine of \$1,000 for a first offense, and a second offense carries a

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<sup>28</sup> 21 U.S.C. §§ 812(c)(10) and (17).

<sup>29</sup> 21 U.S.C. § 812(b)(1).

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mandatory penalty of between 15 days and two years in prison and a \$2,500 fine. Subsequent offenses can carry a prison term of between 90 days and three years, plus a \$5,000 fine.<sup>30</sup>

The penalties for selling or cultivating marijuana depend on the amount at issue:<sup>31</sup>

- Less than 50 plants or kilograms = up to five years in prison and a fine of \$250,000;
- 50 to 99 plants or kilograms = up to 20 years in prison and a fine of \$1 million;
- 100 to 999 plants or kilograms = between 5 and 40 years in prison and a fine of \$500,000; and
- More than 1,000 plants or kilograms = between 10 years and life in prison and a fine of \$1 million.

In addition to the relatively simple issues of possession, cultivation and sale of marijuana, the plant's status under federal law raises other, more complicated legal matters. These include, but are not limited to, banking and the utilization of the Federal Reserve System, money laundering, air emissions, water emissions, the use of pesticides and the payment of taxes (including deductible and allowable expenses).

The DOJ, recognizing the fact that nearly half the states had either decriminalized or legalized medical marijuana, issued a memorandum in 2013 to all United States Attorneys providing guidance regarding marijuana enforcement. That memorandum, often referred to as the "Cole Memo," delineated the DOJ's enforcement priorities as preventing:<sup>32</sup>

- The distribution of marijuana to minors;
- Revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- The diversion of marijuana from states where it is legal under state law in some form to other states;
- State-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Violence and the use of firearms in the cultivation and distribution of marijuana;
- Drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Growing marijuana on public land and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Marijuana possession or use on federal property.

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<sup>30</sup> LegalMatch. *Federal Laws for Marijuana Possession and Distribution*. Retrieved May 9, 2018, from [www.legalmatch.com/law-library/article/federal-marijuana-laws.html](http://www.legalmatch.com/law-library/article/federal-marijuana-laws.html)

<sup>31</sup> LegalMatch. *Federal Laws for Marijuana Possession and Distribution*. Retrieved May 9, 2018, from [www.legalmatch.com/law-library/article/federal-marijuana-laws.html](http://www.legalmatch.com/law-library/article/federal-marijuana-laws.html)

<sup>32</sup> U.S. Department of Justice. *Memorandum for all United States Attorneys, from James M. Cole, Deputy Attorney General, regarding Guidance Regarding Marijuana Enforcement*, August 29, 2013, pp. 1-2. Retrieved May 9, 2018, from [www.justice.gov/iso/opa/resources/3052013829132756857467.pdf](http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf)

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While the Cole Memo's guidance reinforced the DOJ's position that United States Attorneys and federal law enforcement should continue to focus on the enumerated priorities, it also clarified the DOJ's 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.<sup>33</sup>

In such circumstances,

enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity.<sup>34</sup>

Taken together, these provisions were generally interpreted as meaning that so long as state law created a robust regulatory environment that was strongly enforced, the federal government would not interfere except in those individual cases where the DOJ's enforcement priorities were at risk.

However, on January 4, 2018, the DOJ rescinded all previous guidance related to its enforcement of the nation's marijuana laws. In doing so, the DOJ reiterated its general principles that,

require federal prosecutors deciding which cases to prosecute to weigh all relevant considerations, including federal law enforcement priorities set by the Attorney General the seriousness of the crime, the deterrent effect of criminal prosecution, and the cumulative impact of particular crimes on the community.<sup>35</sup>

## Summary of Colorado Laws

During the 2018 legislative session, and as part of a larger effort to recodify portions of Title 12, C.R.S., the General Assembly passed, and the Governor signed, House Bill 1023. This bill moved, effective October 1, 2018, the Medical Code (section 12-43.3-101, *et seq.*, C.R.S.) and the Retail Code (section 12-43.4-101, *et seq.*, C.R.S.) into a new Title 44, C.R.S. Notwithstanding this recodification, and to avoid confusion and erroneous

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<sup>33</sup> U.S. Department of Justice. *Memorandum for all United States Attorneys, from James M. Cole, Deputy Attorney General, regarding Guidance Regarding Marijuana Enforcement*, August 29, 2013, p. 2. Retrieved May 9, 2018, from [www.justice.gov/iso/opa/resources/3052013829132756857467.pdf](http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf)

<sup>34</sup> U.S. Department of Justice. *Memorandum for all United States Attorneys, from James M. Cole, Deputy Attorney General, regarding Guidance Regarding Marijuana Enforcement*, August 29, 2013, p. 3. Retrieved May 9, 2018, from [www.justice.gov/iso/opa/resources/3052013829132756857467.pdf](http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf)

<sup>35</sup> U.S. Department of Justice. *Memorandum for all United States Attorneys, from Jefferson B. Sessions, Attorney General, regarding Marijuana Enforcement*. January 4, 2018. Retrieved June 4, 2018, from [www.justice.gov/opa/press-release/file/1022196/download](http://www.justice.gov/opa/press-release/file/1022196/download)

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citations and references, this sunset report consistently refers and cites to the codes as if they remained in Title 12, C.R.S.

### Colorado Medical Marijuana Code

Medical marijuana is marijuana that is grown and sold pursuant to the provisions of the Medical Code and for a purpose authorized by Colorado's constitution.<sup>36</sup>

The state's constitution defines medical use as:

the acquisition, possession, production, use, or transportation of marijuana or paraphernalia related to the administration of such marijuana to address the symptoms or effects of a patient's debilitating medical condition . . .<sup>37</sup>

Cancer, glaucoma, positive status for human immunodeficiency virus or acquired immune deficiency syndrome, cachexia, severe pain, severe nausea, seizures and persistent muscle spasms constitute debilitating medical conditions. Additionally, CDPHE may deem other conditions to be debilitating medical conditions,<sup>38</sup> but it has not, as of this writing, done so.

Regardless, the General Assembly has determined that post-traumatic stress disorder is a disabling medical condition, and those suffering from it are eligible to use medical marijuana.<sup>39</sup>

In short, the state's constitution creates an affirmative defense to the state's criminal laws relating to the use of marijuana where the patient:<sup>40</sup>

- Was diagnosed by a physician as having a debilitating or disabling medical condition,
- Was advised by his or her physician that the patient might benefit from the medical use of marijuana, and
- Was in possession of amounts of marijuana only as permitted by the state's constitution.

A medical marijuana patient may possess no more than two ounces of a useable form of marijuana and no more than six marijuana plants, with three or fewer being mature, flowering plants that are producing a useable form of marijuana. A patient may possess more than this if he or she can demonstrate that a greater amount is medically necessary to treat the patient's medical condition.<sup>41</sup>

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<sup>36</sup> § 12-43.3-104(7), C.R.S.

<sup>37</sup> Colo. Const. Art. XVIII, § 14(1)(b).

<sup>38</sup> Colo. Const. Art. XVIII, § 14 (1)(a) and § 25-1.5-106(2)(f), C.R.S.

<sup>39</sup> §§ 25-1.5-106(2)(a.7) and -106(2.5)(a), C.R.S.

<sup>40</sup> Colo. Const. Art. XVIII, § 14(2)(a), and § 25-1.5-106(2.5), C.R.S.

<sup>41</sup> Colo. Const. Art. XVIII, § 14(4).

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Medical marijuana patients must register with CDPHE to be considered in compliance with the state’s constitution.<sup>42</sup>

A medical marijuana patient may grow his or her own medical marijuana plants, obtain medical marijuana from a primary caregiver, or obtain medical marijuana from a medical marijuana center.

A primary caregiver is a person, other than the patient or the patient’s physician, who is at least 18 years old and has “significant responsibility for managing the well-being” of the patient.<sup>43</sup>

Any primary caregiver who cultivates medical marijuana for his or her patients or transports medical marijuana for a homebound patient is required to register with the Executive Director.<sup>44</sup>

The Executive Director, in turn, is required to, among other things:<sup>45</sup>

- Grant or refuse state licenses for the cultivation, manufacture, distribution and sale of medical marijuana;
- Suspend, fine, restrict or revoke such licenses upon a violation of the Medical Code or the rules promulgated thereunder; and
- Promulgate such rules as are necessary for the proper regulation and control of the cultivation, manufacture, distribution and sale of medical marijuana and for the enforcement of the Medical Code.

Additionally, the Executive Director must promulgate rules, and has mostly done so, addressing, among other things:<sup>46</sup>

- Signage, marketing and advertising, including, but not limited to a prohibition on mass-market campaigns that have a high likelihood of reaching those under age 18;
- A prohibition on the production and sale of MMIPs that are in the distinct shape of a human, animal or fruit; and
- Conditions under which a licensee can transfer fibrous waste to a person for the purpose of producing only industrial fibrous products.

The Executive Director is authorized to promulgate rules, and has done so, on a variety of subjects, including:<sup>47</sup>

- Compliance with, enforcement of or violation of any provision of the Medical Code or any rule promulgated thereunder, including procedures and grounds for denying, suspending, fining, restricting or revoking a state license;<sup>48</sup>

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<sup>42</sup> § 25-1.5-106(9)(a), C.R.S.

<sup>43</sup> Colo. Const. Art. XVIII, § 14(1)(f).

<sup>44</sup> §§ 25-1.5-106(7)(e) and 12-43.3-201(1), C.R.S.

<sup>45</sup> § 12-43.3-202(1), C.R.S.

<sup>46</sup> § 12-43.3-202(2.5), C.R.S.

<sup>47</sup> § 12-43.3-202(2)(a), C.R.S.

<sup>48</sup> See 1 CCR §§ 212-1, M 1200 and 1300, *et seq.*, Medical Marijuana Code Rules.



- Requirements for inspections, investigations, searches, seizures, forfeitures and such additional activities as may become necessary from time to time;
- Creation of a range of penalties;<sup>49</sup>
- Prohibition of misrepresentation and unfair practices;
- Control of informational and product displays on licensed premises;
- Development of individual identification cards for owners, officers, managers, contractors, employees and other support staff of entities licensed pursuant to the Medical Code, including a fingerprint-based criminal history record check as may be required prior to issuing a card;
- Security requirements for any premises licensed pursuant to the Medical Code;<sup>50</sup>
- Regulation of the storage of, warehouses for and transportation of medical marijuana;<sup>51</sup>
- Sanitary requirements for medical marijuana centers, including, but not limited to, sanitary requirements for the preparation of MMIPs;<sup>52</sup>
- Specification of acceptable forms of picture identification that a medical marijuana center may accept when verifying a sale;<sup>53</sup>
- Labeling standards;<sup>54</sup>
- Prohibition of the sale of medical marijuana and MMIPs unless the product is packaged in packaging meeting requirements that are similar to the federal Poison Prevention Packaging Act of 1970;<sup>55</sup>
- Records to be kept by licensees and the required availability of records;<sup>56</sup>
- State licensing procedures, including procedures for renewals, reinstatements, initial licenses and the payment of license fees; and
- Such other matters as are necessary for the fair, impartial, stringent and comprehensive administration of the Medical Code.

No one may operate a medical marijuana center, optional premises cultivation (OPC) operation or a MMIPs manufacturing facility unless he or she first obtains a license from both the Executive Director and the appropriate local licensing authority.<sup>57</sup>

The Executive Director is authorized to issue nine classes of licenses:<sup>58</sup>

- Medical marijuana center license,
- OPC operation license,
- MMIPs manufacturing license,
- Medical marijuana testing facility license,
- Medical marijuana transporter license,
- Medical marijuana business operator license,

<sup>49</sup> See 1 CCR § 212-1, M 1307, Medical Marijuana Code Rules.

<sup>50</sup> See 1 CCR § 212-1, M 305, Medical Marijuana Code Rules.

<sup>51</sup> See 1 CCR §§ 212-1, M 801 and 802, Medical Marijuana Code Rules.

<sup>52</sup> See 1 CCR §§ 212-1, M 407, 504 and 604, Medical Marijuana Code Rules.

<sup>53</sup> See 1 CCR § 212-1, M 405, Medical Marijuana Code Rules.

<sup>54</sup> See 1 CCR §§ 212-1, M 1000, *et seq.*, and M 1000-1, *et seq.*, Medical Marijuana Code Rules.

<sup>55</sup> See 1 CCR § 212-1, M 1001, Medical Marijuana Code Rules.

<sup>56</sup> See 1 CCR §§ 212-1, M 309 and 901, Medical Marijuana Code Rules.

<sup>57</sup> § 12-43.3-310(2), C.R.S., and 1 CCR 212-1, § M 101, Medical Marijuana Code Rules.

<sup>58</sup> § 12-43.3-401(1), C.R.S.



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- Marijuana research and development license,
  - Marijuana research and development cultivation license, and
  - Occupational licenses.

A medical marijuana center is a business that sells medical marijuana to patients or primary caregivers, but is not, itself, a primary caregiver.<sup>59</sup>

An OPC operation refers to where a medical marijuana center or a MMIPs manufacturer grows and cultivates the medical marijuana that it sells.<sup>60</sup>

A MMIPs manufacturer is a person or business that manufactures products infused with medical marijuana that are intended for use or consumption other than by smoking, including edible products, ointments and tinctures.<sup>61</sup>

A medical marijuana testing facility is a public or private laboratory that conducts testing and research on medical marijuana for medical marijuana licensees or medical marijuana or MMIPs that are grown or produced by a registered medical marijuana patient or a registered caregiver when the patient is participating in a clinical or observational study conducted by a marijuana research and development licensee or a marijuana research and development cultivation licensee.<sup>62</sup>

A medical marijuana transporter is a person or business that transports medical marijuana from one medical marijuana business to another<sup>63</sup> and may include the provision of logistics, distribution and storage of medical marijuana and MMIPs.<sup>64</sup>

A medical marijuana business operator is a person or a business that is not an owner but provides professional operational services to a medical marijuana business.<sup>65</sup>

A marijuana research and development licensee is a person or entity that may possess marijuana, and a marijuana research and development cultivation licensee is a person or entity that may grow, cultivate, possess and transfer marijuana for limited research purposes:<sup>66</sup>

- To test chemical potency and composition levels;
- To conduct clinical investigations of marijuana-derived medicinal products;
- To conduct research on the efficacy and safety of administering marijuana as part of medical treatment;
- To conduct genomic, horticultural or agricultural research; and
- To conduct research on marijuana-affiliated products or systems.

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<sup>59</sup> § 12-43.3-104(8), C.R.S.

<sup>60</sup> §§ 12-43.3-104(11) and (12), C.R.S.

<sup>61</sup> §§ 12-43.3-104(9) and (10), C.R.S.

<sup>62</sup> § 12-43.3-405(1), C.R.S.

<sup>63</sup> § 12-43.3-104(8.5), C.R.S.

<sup>64</sup> § 12-43.3-406(1), C.R.S.

<sup>65</sup> § 12-43.3-104(7.5), C.R.S.

<sup>66</sup> §§ 12-43.3-409(1) and -409(2), C.R.S.

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In order to better prevent unlicensed parties from controlling medical marijuana licensees, the Executive Director must require a complete disclosure of all people having a direct or indirect financial interest in each licensee.<sup>67</sup>

No license may be issued,<sup>68</sup>

- If an application pertains to a premises that is the same or within 1,000 feet of a location for which a license was denied within the previous two years due to the nature of the use or other concern related to the location;
- Until the applicant is in possession of the premises;
- If such use is not permitted under the applicable zoning laws; or
- If the premises are within 1,000 feet of a school; an alcohol treatment facility; the principal campus of a college, university or seminary; or a residential childcare facility.

All medical marijuana business licenses are valid for one year from the date of issuance, except that medical marijuana transporter licenses and occupational licenses are valid for two years.<sup>69</sup>

In general, occupational licenses are issued to owners, managers, operators, employees, contractors and other support staff employed by, working in or having access to restricted areas of a licensed premises.<sup>70</sup> There are three basic types of occupational licenses:

- Associated key licenses are issued to individuals who are owners of a medical marijuana business or who control or are in a position to exercise control over a medical marijuana licensee.<sup>71</sup>
- Key licenses are issued to individuals who perform duties that are central to the medical marijuana business' operation and have the highest level of responsibility.<sup>72</sup>
- Support licenses are issued to individuals who perform duties that support the medical marijuana business' operations, such as sales clerks and cooks.<sup>73</sup>

Among other things, the Executive Director is specifically prohibited from issuing any license to:<sup>74</sup>

- A person whose criminal history indicates that he or she is not of good moral character;
- A corporation, if the criminal history of any of its officers, directors or stockholders indicates that such an individual is not of good moral character;

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<sup>67</sup> § 12-43.3-313, C.R.S.

<sup>68</sup> § 12-43.3-308, C.R.S.

<sup>69</sup> § 12-43.3-310(6), C.R.S., and 1 CCR § 212-1, M 252(A), Medical Marijuana Code Rules.

<sup>70</sup> § 12-43.3-401(1)(d), C.R.S.

<sup>71</sup> 1 CCR § 212-1, M 103, Medical Marijuana Code Rules.

<sup>72</sup> 1 CCR § 212-1, M 103, Medical Marijuana Code Rules.

<sup>73</sup> 1 CCR § 212-1, M 103, Medical Marijuana Code Rules.

<sup>74</sup> § 12-43.3-307(1), C.R.S.

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- A licensed physician who makes patient recommendations for medical marijuana usage;
  - A person employing, assisted by, or financed in whole or in part by any other person whose criminal history indicates that he or she is not of good moral character and reputation;
  - A person under 21 years old;
  - A person who fails to file any tax return and pay any taxes, interest or penalties relating to a marijuana business;
  - A person who fails to meet the qualifications for licensure that directly and demonstrably relate to the operation of a medical marijuana business;
  - A person who has discharged a sentence in the five years immediately preceding the application date for a conviction of a felony;
  - A person who has discharged a sentence for a felony regarding the possession, distribution, manufacturing, cultivation or use of a controlled substance in the 10 years immediately preceding the date of application or five years from May 28, 2013, whichever is longer, except that the Executive Director may grant a license to such a person if the person has a state felony conviction based on possession or use of marijuana or marijuana concentrate that would not be a felony if the person were convicted of the offense on the date of license application;
  - A person who employs another person at a medical marijuana facility who has not passed a criminal history background check;
  - A sheriff, deputy sheriff, police officer or prosecuting officer, or an officer or employee of the Executive Director or any local licensing authority;
  - A person whose authority as a primary caregiver has been revoked by CDPHE;
  - A person for a location that is currently licensed as a retail food establishment or wholesale food registrant; and
  - A publicly traded company.

A licensed OPC operation, commonly referred to as a “grow,” must be associated with a licensed medical marijuana center or a licensed MMIPs manufacturer.<sup>75</sup> This is commonly referred to as “vertical integration.” This is further codified by limiting licensed medical marijuana centers’ ability to sell to other licensed medical marijuana centers no more than 50 percent of a given licensee’s total on-hand inventory of medical marijuana.<sup>76</sup> Likewise, it may purchase up to 50 percent of what it sells from other medical marijuana centers.

However, mandatory vertical integration will repeal by operation of law on July 1, 2019.<sup>77</sup> In its place, the Executive Director is required to promulgate rules to manage the statewide production of medical marijuana under statutory authority identical to that provided in the Retail Code.<sup>78</sup>

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<sup>75</sup> § 12-43.3-403(1), C.R.S.

<sup>76</sup> § 12-43.3-402(4), C.R.S.

<sup>77</sup> § 12-43.3-402(4)(b), C.R.S.

<sup>78</sup> § 12-43.3-202(4), C.R.S.

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A licensed MMIPs manufacturer may obtain medical marijuana from licensed medical marijuana centers, or it may have its own OPC operation.<sup>79</sup> If it has its own OPC operation, it may not sell that medical marijuana unless it is contained in the MMIPs it manufactures itself.<sup>80</sup> In general, a MMIPs manufacturer may grow no more than 500 plants at any one time.<sup>81</sup>

Finally, a licensed medical marijuana center may sell prepackaged and labeled MMIPs that are manufactured by a licensed MMIPs manufacturer.<sup>82</sup>

All medical marijuana products must be labeled with a list of all chemical additives that were used in the cultivation and the production of the medical marijuana product.<sup>83</sup>

Prior to making any sale of medical marijuana or MMIPs to a patient, the licensed medical marijuana center must verify that the purchaser has a valid medical marijuana registry card<sup>84</sup> and valid photo identification.<sup>85</sup> Unless authorized by a physician, a patient may purchase no more than two ounces of medical marijuana, or its equivalent in MMIPs, during a single sales transaction.<sup>86</sup>

The Executive Director may suspend or revoke a license, or impose a fine on any licensee for a violation of the Medical Code by the licensee or any of its agents or employees.<sup>87</sup> Any such actions can only be taken after an investigation and an opportunity for a public hearing.<sup>88</sup>

No suspension, except a summary suspension, may last more than six months<sup>89</sup> and in those instances when a suspension is for 14 days or less, the licensee may petition the Executive Director to pay a fine in lieu of suspension.<sup>90</sup> Such a fine may be no less than \$500 and no more than \$100,000.<sup>91</sup>

A final agency order may direct the destruction of medical marijuana and MMIPs.<sup>92</sup> In such a case, the licensee has 15 days within which to petition the District Court in the City and County of Denver for a stay of the agency's action.<sup>93</sup>

Licensees are required to keep and maintain books and records necessary to fully document the business transactions of the licensee.<sup>94</sup> The Executive Director may inspect such records as well as any licensed premises during business hours.<sup>95</sup>

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<sup>79</sup> §§ 12-43.3-404(3) and (8), C.R.S.

<sup>80</sup> § 12-43.3-404(8), C.R.S.

<sup>81</sup> § 12-43.3-404(9), C.R.S.

<sup>82</sup> § 12-43.3-402(2), C.R.S.

<sup>83</sup> § 12-43.3-402(7), C.R.S.

<sup>84</sup> § 12-43.3-402(5), C.R.S., and 1 CCR § 212-1, M 405(A)(1), Medical Marijuana Code Rules.

<sup>85</sup> 1 CCR § 212-1, M 405(A)(1), Medical Marijuana Code Rules.

<sup>86</sup> 1 CCR § 212-1, M 403(D), Medical Marijuana Code Rules.

<sup>87</sup> §§ 12-43.3-601(1) and (2), C.R.S.

<sup>88</sup> § 12-43.3-601(1), C.R.S.

<sup>89</sup> § 12-43.3-601(2), C.R.S.

<sup>90</sup> § 12-43.3-601(3)(a), C.R.S.

<sup>91</sup> § 12-43.3-601(3)(b), C.R.S.

<sup>92</sup> § 12-43.3-602(4), C.R.S.

<sup>93</sup> § 12-43.3-602(5), C.R.S.

<sup>94</sup> § 12-43.3-701(1), C.R.S.

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It is a Class 2 misdemeanor, punishable by between 3 and 12 months imprisonment, a fine of between \$250 and \$1,000, or both, for any person to:<sup>96</sup>

- Consume medical marijuana on the premises of a licensed medical marijuana business;
- Knowingly permit the use of his or her registry identification card by another person for the unlawful purchasing of medical marijuana;<sup>97</sup> or
- Buy, sell, transfer, give away or acquire medical marijuana except as allowed under the Medical Code.<sup>98</sup>

It is also a Class 2 misdemeanor for any licensee to:<sup>99</sup>

- Be within a limited access area<sup>100</sup> unless the person's license badge is displayed;
- Fail to designate areas of ingress and egress for limited access areas;
- Fail to report a transfer of medical marijuana;
- Fail to report the name of or a change in managers;
- Display any signs that are inconsistent with local laws or regulations;
- Use advertising material that is misleading, deceptive or false, or that is designed to appeal to minors;
- Provide public premises for the purpose of consumption of medical marijuana in any form;
- Sell medical marijuana to a person who is not licensed or who is not able to produce a valid patient registry identification card;
- Possess more than six medical marijuana plants and two ounces of medical marijuana for each patient who has registered the medical marijuana center as his or her primary center, unless such patients are authorized to have more than such amounts;
- Offer for sale medical marijuana in person except within licensed premises;
- Buy medical marijuana from a person not licensed to sell medical marijuana;
- Sell medical marijuana except in the permanent location specifically designated in the license;
- Burn or otherwise destroy medical marijuana for the purpose of evading an investigation or preventing seizure; or
- Abandon a licensed premises without notifying the Executive Director and local licensing authority at least 48 hours in advance and without accounting for and forfeiting to the Executive Director for destruction all medical marijuana.

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<sup>95</sup> § 12-43.3-701(2), C.R.S.

<sup>96</sup> § 12-43.3-901(7), C.R.S.

<sup>97</sup> § 12-43.3-901(1), C.R.S.

<sup>98</sup> § 12-43.3-901(2), C.R.S.

<sup>99</sup> §§ 12-43.3-901(3, 4 and 7), C.R.S.

<sup>100</sup> Section 12-43.3-105, C.R.S., defines limited access area as "a building, room or other contiguous area upon the licensed premises where medical marijuana is grown, cultivated, stored, weighed, displayed, packaged, sold, or possessed for sale, under control of the licensee, with limited access to only those persons licensed by" the Executive Director. A limited access area can be differentiated from a restricted access area, which 1 CCR § 212-1, M 103, defines as a designated and secure area within a licensed medical marijuana center where medical marijuana and MMIPs are sold, possessed for sale, and displayed for sale, and where no one without a valid medical marijuana registry card is permitted.

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A medical marijuana center may sell medical marijuana to any patient with a valid registry identification card,<sup>101</sup> but it may only grow, at its associated OPC, for those patients who designate it as their primary center.<sup>102</sup> Once a patient designates a primary care center, he or she cannot change that designation for at least 30 days.<sup>103</sup>

All money collected pursuant to the Medical Code is deposited into the Marijuana Cash Fund, which is also funded by money collected pursuant to the Retail Code.<sup>104</sup>

Finally, the Executive Director, in consultation with CDPHE, is directed to approve responsible vendor server and seller training programs.<sup>105</sup> Such programs must last at least two hours and must cover a core curriculum addressing:<sup>106</sup>

- Information on required licenses, age requirements, patient registry identification cards, maintenance of records, privacy issues and unlawful acts;
- Administrative and criminal liability and license and court sanctions;
- Statutory and regulatory requirements for employees and owners;
- Acceptable forms of identification, including medical marijuana registry identification cards and associated documents and procedures;
- Local and state licensing and enforcement statutes and rules;
- Marijuana's effect on the human body, including its physical effects based on type of marijuana product, the amount of time to feel impairment, visible signs of impairment and recognizing signs of impairment; and
- Sales to minors.

A medical or retail marijuana business may be designated as a responsible vendor after successfully completing a responsible vendor training program.<sup>107</sup> Such designation is valid for two years<sup>108</sup> and may be considered as a mitigating factor if the licensee is subsequently found to have violated either code.<sup>109</sup>

Any municipality, county, city or city and county (local government) may opt out of the Medical Code, thereby banning the commercial cultivation and sale of medical marijuana in that jurisdiction.<sup>110</sup>

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<sup>101</sup> § 12-43.3-402(5), C.R.S.

<sup>102</sup> 1 CCR § 212-1, M 402(A), Medical Marijuana Code Rules.

<sup>103</sup> 1 CCR § 212-1, M 402(B), Medical Marijuana Code Rules.

<sup>104</sup> § 12-43.3-501(1), C.R.S.

<sup>105</sup> § 12-43.3-1101(1), C.R.S.

<sup>106</sup> § 12-43.3-1101(2)(b), C.R.S., and 1 CCR § 212-1, M 408(C), Medical Marijuana Code Rules.

<sup>107</sup> § 12-43.3-1102(1)(a), C.R.S.

<sup>108</sup> § 12-43.3-1102(1)(a), C.R.S.

<sup>109</sup> § 12-43.3-1102(3), C.R.S.

<sup>110</sup> § 12-43.3-1102(3), C.R.S.

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## Colorado Retail Marijuana Code

The state's constitution defines marijuana as:

All parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate. "Marijuana" or "marihuana" does not include industrial hemp, nor does it include the fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.<sup>111</sup>

Industrial hemp is cannabis with a THC concentration that does not exceed 0.3 percent on a dry weight basis.<sup>112</sup>

Any individual who is at least 21 years old may:

- Possess, use, display, purchase or transport marijuana accessories or one ounce or less of marijuana;<sup>113</sup>
- Possess, grow, process or transport no more than six marijuana plants and possess the marijuana produced by those plants on the premises where the plants were grown, provided that the growing takes place in an enclosed, locked space, is not conducted openly or publicly and is not made available for sale;<sup>114</sup>
- Transfer one ounce or less of marijuana without remuneration to a person who is at least 21 years old;<sup>115</sup>
- Consume marijuana, provided that such consumption is not open and public or in a manner that endangers others;<sup>116</sup> and
- Assist another person who is at least 21 years old in any of the acts described above.<sup>117</sup>

Although individuals may possess and use marijuana, only those entities licensed pursuant to the Retail Code may grow, manufacture and sell retail marijuana and marijuana products.<sup>118</sup> Retail marijuana, in turn, is defined as marijuana that is cultivated, manufactured, distributed or sold by a licensed retail marijuana establishment.<sup>119</sup> Retail marijuana establishments include retail marijuana stores, retail marijuana cultivation facilities, retail marijuana product manufacturers and retail

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<sup>111</sup> Colo. Const. Art. XVIII, § 16(2)(f).

<sup>112</sup> Colo. Const. Art. XVIII, § 16(2)(d).

<sup>113</sup> Colo. Const. Art. XVIII, § 16(3)(a).

<sup>114</sup> Colo. Const. Art. XVIII, § 16(3)(b).

<sup>115</sup> Colo. Const. Art. XVIII, § 16(3)(c).

<sup>116</sup> Colo. Const. Art. XVIII, § 16(3)(d).

<sup>117</sup> Colo. Const. Art. XVIII, § 16(3)(e).

<sup>118</sup> § 12-43.4-102, C.R.S.

<sup>119</sup> § 12-43.4-103(15), C.R.S.



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marijuana testing facilities.<sup>120</sup> Also licensed under the Retail Code are retail marijuana business operators<sup>121</sup> and retail marijuana transporters.<sup>122</sup>

The Retail Code names the Executive Director as the state licensing authority and vests in that position all regulatory authority over retail marijuana.<sup>123</sup>

Further, the Executive Director is authorized to, among other things:<sup>124</sup>

- Grant or refuse state licenses for the cultivation, manufacture, distribution, sale and testing of retail marijuana and retail marijuana products;
- Suspend, fine, restrict or revoke such licenses upon a violation of the Retail Code or any rule promulgated thereunder;
- Impose any penalty authorized by the Retail Code or rule promulgated thereunder;
- Hear and determine at a public hearing any contested state license denial and any complaints against a licensee; and
- Maintain the confidentiality of reports or other information obtained from a licensee containing any individualized data, information or records related to the licensee or its operation, including sales information, financial records, tax returns, credit reports, cultivation information, testing results, and security information and plans, or revealing any customer information or any other records exempt from public inspection pursuant to state law, unless such information is used for a purpose authorized by the Medical or Retail Codes or for any other state or local law enforcement purpose.

The Executive Director is required to promulgate rules, and has mostly done so, on a variety of subjects, including:<sup>125</sup>

- Procedures for the issuance, renewal,<sup>126</sup> suspension and revocation of licenses;<sup>127</sup>
- A schedule of application, licensing and renewal fees;<sup>128</sup>
- Qualifications for licensure, including fingerprint-based criminal history record checks, for all owners, officers, managers, contractors, employees and other support staff of entities licensed under the Retail Code;<sup>129</sup>
- Requirements to prevent the sale or diversion of retail marijuana and retail marijuana products to those under 21 years of age;<sup>130</sup>
- Health and safety regulations and standards for the manufacture of retail marijuana products and the cultivation of retail marijuana;<sup>131</sup>

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<sup>120</sup> § 12-43.4-103(17), C.R.S.

<sup>121</sup> § 12-43.4-401(1)(g), C.R.S.

<sup>122</sup> § 12-43.4-401(1)(f), C.R.S.

<sup>123</sup> §§ 12-43.4-201, 12-43.4-103(24) and 12-43.3-201, C.R.S.

<sup>124</sup> § 12-43.4-202(2), C.R.S.

<sup>125</sup> § 12-43.4-202(3), C.R.S.

<sup>126</sup> See 1 CCR § 212-2, R 200, *et seq.*, Retail Marijuana Code Rules.

<sup>127</sup> See 1 CCR § 212-2, R 1300, *et seq.*, Retail Marijuana Code Rules.

<sup>128</sup> See 1 CCR §§ 212-2, R 207, R 208 and R 209, Retail Marijuana Code Rules.

<sup>129</sup> See 1 CCR § 212-2, R 231, Retail Marijuana Code Rules.

<sup>130</sup> See 1 CCR § 212-2, R 404(A), Retail Marijuana Code Rules.

<sup>131</sup> See 1 CCR §§ 212-2, R 504 and R 604, Retail Marijuana Code Rules.



- Limitations on the display of retail marijuana and retail marijuana products;<sup>132</sup>
- Storage of, warehouses for and transportation of retail marijuana and retail marijuana products;<sup>133</sup>
- Sanitary requirements for retail establishments;<sup>134</sup>
- Records to be kept by licensees;<sup>135</sup>
- The reporting and transmittal of monthly sales tax payments;<sup>136</sup>
- A schedule of penalties and procedures for issuing and appealing citations for violations;<sup>137</sup>
- By January 1, 2016, the equivalence of one ounce of retail marijuana flower in various retail marijuana products including retail marijuana concentrate;<sup>138</sup>
- Specifications of duties of officers and employees of the Executive Director;<sup>139</sup>
- Instructions for local jurisdictions and law enforcement officers;<sup>140</sup>
- Requirements for inspections, investigations, searches, seizures and forfeitures;<sup>141</sup>
- Prohibition or regulation of additives to retail marijuana products, including those that are toxic, designed to make the product more addictive, designed to make the product more appealing to children or misleading to consumers;<sup>142</sup>
- Labeling guidelines concerning the total content of THC per unit of weight;<sup>143</sup> and
- By January 1, 2016, requirements that edible retail marijuana products be clearly identifiable with a standard symbol indicating that they contain marijuana and are not for consumption by children.<sup>144</sup>

The Executive Director is required to promulgate rules, and has done so, addressing:

- Signage, marketing and advertising, including packaging and accessory branding, and various prohibitions;<sup>145</sup>
- Packaging requirements;<sup>146</sup>
- Labeling requirements;<sup>147</sup> and
- Serving sizes of edible marijuana products.<sup>148</sup>

<sup>132</sup> See 1 CCR § 212-2, R 403(C), Retail Marijuana Code Rules.

<sup>133</sup> See 1 CCR § 212-2, R 800, *et seq.*, Retail Marijuana Code Rules.

<sup>134</sup> See 1 CCR §§ 212-2, R 406, R 504 and R 604, Retail Marijuana Code Rules.

<sup>135</sup> See 1 CCR § 212-2, R 900, *et seq.*, Retail Marijuana Code Rules.

<sup>136</sup> See 1 CCR § 212-2, R 902, Retail Marijuana Code Rules.

<sup>137</sup> See 1 CCR § 212-2, R 1300, *et seq.*, Retail Marijuana Code Rules.

<sup>138</sup> See 1 CCR § 212-2, R 402(C)(4), Retail Marijuana Code Rules.

<sup>139</sup> See 1 CCR § 212-2, R 1201, Retail Marijuana Code Rules.

<sup>140</sup> See 1 CCR § 212-2, R 1401, Retail Marijuana Code Rules.

<sup>141</sup> See 1 CCR § 212-2, R 1202, Retail Marijuana Code Rules.

<sup>142</sup> See 1 CCR §§ 212-2, R 504(F) and R 604(F), Retail Marijuana Code Rules.

<sup>143</sup> See 1 CCR § 212-2, R 1000, *et seq.*, Retail Marijuana Code Rules.

<sup>144</sup> See 1 CCR § 212-2, R 1000, *et seq.*, Retail Marijuana Code Rules.

<sup>145</sup> § 12-43.4-202(3)(c)(I), C.R.S. See 1 CCR § 212-2, R 1100, *et seq.*, Retail Marijuana Code Rules.

<sup>146</sup> § 12-43.4-202(3)(c)(III), C.R.S. See 1 CCR §§ 212-2, R 1006 and R 1001-1(E), Retail Marijuana Code Rules.

<sup>147</sup> § 12-43.4-202(3)(a)(VII), C.R.S. See 1 CCR §§ 212-2, R 1000, *et seq.*, and R 1000-1, *et seq.*, Retail Marijuana Code Rules.

<sup>148</sup> § 12-43.4-202(3)(c)(V), C.R.S. See 1 CCR §§ 212-2, R 602(C), R 1004(B)(2)(c), and R 1002-1(C)(2), Retail Marijuana Code Rules.

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The Executive Director is also required to promulgate rules addressing the conditions under which a licensee can transfer fibrous waste to a person for the purpose of producing only industrial fiber products.<sup>149</sup>

In order to manage production of retail marijuana in the state, the Executive Director may limit the number of licenses issued, or the amount of production permitted by individual licensees or all licensees collectively.<sup>150</sup>

The Executive Director is authorized to issue seven distinct types of licenses to retail establishments:<sup>151</sup>

- Retail marijuana stores,
- Retail marijuana cultivation facilities,
- Retail marijuana product manufacturing facilities,
- Retail marijuana testing facilities,
- Retail marijuana transporters,
- Retail marijuana business operators, and
- Occupational licenses.<sup>152</sup>

A retail cultivation facility is an entity licensed to cultivate, prepare and package retail marijuana and sell retail marijuana to retail stores, to retail product manufacturing facilities and to other retail cultivation facilities, but not to consumers.<sup>153</sup>

The Executive Director is required to develop a classification system for retail cultivation facilities based upon any combination of square footage of the facility; lights, lumens or wattage; lit canopy; the number of plants or other reasonable metrics.<sup>154</sup>

To this end, the Executive Director has determined that new retail cultivation facility licensees are permitted to grow up to 1,800 plants at any one time,<sup>155</sup> and after at least one harvest season of sales, may seek authorization to grow more plants, at progressive increments: Tier 1 (up to 1,800 plants), Tier 2 (1,801 to 3,600 plants), Tier 3 (3,601 to 6,000 plants), Tier 4 (6,001 to 10,200 plants) and Tier 5 (10,201 to 13,800+ plants).<sup>156</sup>

Retail cultivation facilities must remit any applicable excise tax to the Department of Revenue, based on the average wholesale price of marijuana as determined by the Executive Director.<sup>157</sup>

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<sup>149</sup> § 12-43.4-202(5), C.R.S.

<sup>150</sup> § 12-43.4-202(4)(b)(I), C.R.S.

<sup>151</sup> Colo. Const. Art. XVIII, §§ 16(4)(b), 16(4)(c), 16(4)(d) and 16(4)(e), and § 12-43.4-401(1), C.R.S.

<sup>152</sup> Occupational licenses are issued under the Retail Code in the same manner as they are issued under the Medical Code, except that those issued under the Retail Code are valid for one year only.

<sup>153</sup> Colo. Const. Art. XVIII, § 16(2)(h) and § 12-43.4-103(16), C.R.S.

<sup>154</sup> § 12-43.4-202(4)(a), C.R.S.

<sup>155</sup> 1 CCR § 212-2, R 212(C), Retail Marijuana Code Rules.

<sup>156</sup> 1 CCR §§ 212-2, R 506(C) and R 506(E), Retail Marijuana Code Rules.

<sup>157</sup> § 12-43.4-403(3), C.R.S.

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A retail product manufacturing facility is an entity licensed to purchase retail marijuana; manufacture, prepare and package retail marijuana products and sell them to other retail product manufacturing facilities and to retail stores, but not to consumers.<sup>158</sup>

Retail marijuana products are concentrated marijuana products and marijuana products that comprise marijuana and other ingredients and are intended for use or consumption, such as edible products, ointments and tinctures.<sup>159</sup>

Any licensed retail establishment must submit samples of retail marijuana and retail marijuana products to a licensed retail testing facility so that those samples may be tested for, among other things, potency, homogeneity, residual solvents, harmful chemicals and microbials.<sup>160</sup> A retail testing facility is an entity licensed to analyze and certify the safety and potency of retail marijuana.<sup>161</sup> No person who has an interest in a retail testing facility license may have an interest in any other marijuana license, either retail or medical.<sup>162</sup>

A retail store is an entity licensed to purchase retail marijuana from retail cultivation facilities and retail marijuana products from retail product manufacturing facilities and to sell such products to consumers.<sup>163</sup>

No retail marijuana store may sell retail marijuana to anyone under the age of 21 and even then, the store may sell no more than one ounce of retail marijuana or its equivalent in retail marijuana products in a single transaction.<sup>164</sup>

Prior to making any sale, an employee of a retail store must verify that the purchaser has valid identification showing that he or she is at least 21. If fraudulent identification is presented, the employee may confiscate the identification, detain the purchaser or both.<sup>165</sup>

A retail store that sells retail marijuana or retail marijuana products to someone under 21 commits a Class 1 misdemeanor, which is punishable by between 6 and 18 months imprisonment, a fine of between \$500 and \$5,000, or both.<sup>166</sup>

Retail marijuana stores are prohibited from selling consumable products that do not contain marijuana<sup>167</sup> or any retail marijuana or retail marijuana products that contain alcohol or nicotine.<sup>168</sup>

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<sup>158</sup> Colo. Const. Art. XVIII, § 16(2)(j) and § 12-43.4-103(19), C.R.S.

<sup>159</sup> Colo. Const. Art. XVIII, § 16(2)(k) and § 12-43.4-103(18), C.R.S.

<sup>160</sup> §§ 12-43.4-202(3)(a)(IV), 12-43.4-402(4), 12-43.4-403(5) and 12-43.4-404(6), C.R.S.

<sup>161</sup> Colo. Const. Art. XVIII, § 16(2)(l) and § 12-43.4-103(21), C.R.S.

<sup>162</sup> § 12-43.4-405(3), C.R.S.

<sup>163</sup> Colo. Const. Art. XVIII, § 16(2)(n) and § 12-43.4-103(20), C.R.S.

<sup>164</sup> §§ 12-43.4-402(3)(a)(I) and -402(3)(b)(I), C.R.S.

<sup>165</sup> § 12-43.4-402(3)(b), C.R.S.

<sup>166</sup> §§ 12-43.4-901(4)(e), 12-43.4-901(6) and 18-1.3-501(1)(a), C.R.S.

<sup>167</sup> § 12-43.4-402(7)(a), C.R.S.

<sup>168</sup> § 12-43.4-402(7)(b), C.R.S.

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No retail marijuana establishment may operate without first obtaining both a state license and local jurisdiction approval. As a result, any state license is conditioned upon local jurisdiction approval. If the local jurisdiction does not approve an application within one year, the state license expires and may not be renewed. If the local jurisdiction denies the application, the Executive Director must revoke the state license.<sup>169</sup>

Applicants apply to the Executive Director, who then forwards a copy of the state application to the relevant local jurisdiction.<sup>170</sup> Similarly, the Executive Director is required to forward to the local jurisdiction, half of the application fee.<sup>171</sup>

The Executive Director must issue a retail license to an applicant no sooner than 45 days and no later than 90 days after receipt of the application, unless the Executive Director or the relevant local jurisdiction denies the application.<sup>172</sup> If the Executive Director fails to issue the license within this time frame and fails to notify the applicant as to the reason, the applicant may resubmit its application directly to the local jurisdiction and, if approved, operate with only local jurisdiction approval.<sup>173</sup>

The Executive Director must deny a state license when:

- The premises upon which the applicant proposes to conduct business do not satisfy the requirements of the Retail Code;<sup>174</sup>
- The applicant is not, or will not be, entitled to possession of the premises upon which the applicant proposes to conduct business;<sup>175</sup> or
- The applicant fails to satisfy the statutory requirements to own and operate a retail marijuana establishment.<sup>176</sup>

The Executive Director may deny or refuse to renew a retail establishment license when:<sup>177</sup>

- The licensee or applicant has violated, does not meet, or has failed to comply with the Retail Code, the Executive Director's rules, or any local jurisdiction requirements;<sup>178</sup>
- The licensee or applicant has failed to comply with any special terms or conditions that were placed on its license by the Executive Director or local jurisdiction;<sup>179</sup> or
- The licensed premises have been operated in a manner that adversely affects the public health or the safety of the immediate neighborhood.<sup>180</sup>

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<sup>169</sup> § 12-43.4-304(1), C.R.S.

<sup>170</sup> § 12-43.4-301(1), C.R.S.

<sup>171</sup> Colo. Const. Art. XVIII, § 16(5)(g)(II) and §§ 12-43.4-501(1) and 12-43.4-501(2), C.R.S.

<sup>172</sup> Colo. Const. Art. XVIII, § 16(5)(g)(III).

<sup>173</sup> Colo. Const. Art. XVIII, § 16(5)(h).

<sup>174</sup> § 12-43.4-305(1), C.R.S.

<sup>175</sup> § 12-43.4-307(1)(b), C.R.S.

<sup>176</sup> § 12-43.4-306(1), C.R.S.

<sup>177</sup> § 12-43.4-305(1), C.R.S.

<sup>178</sup> § 12-43.4-305(1)(a), C.R.S.

<sup>179</sup> § 12-43.4-305(1)(b), C.R.S.

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Each license issued under the Retail Code is separate and distinct, and a separate license is required for each specific business and each geographical location.<sup>181</sup>

In order to prevent the control of retail establishments by anyone other than the licensee, each applicant and licensee must disclose all persons having a direct or indirect financial interest, and the extent of such interest, in the applicant or licensee,<sup>182</sup> none of which can be a publicly traded company.<sup>183</sup>

Dual medical marijuana centers and retail marijuana stores must maintain separate licensed premises, including entrances and exits, inventory, point of sale operations and record keeping. However, if the medical marijuana center sells only to patients who are at least 21, single entrances and exits and a virtual separation of inventory is permitted.<sup>184</sup>

In addition to licensing retail establishments, the Executive Director also licenses individuals by issuing occupational licenses to the owners, managers, operators, employees, contractors and other support staff employed by, working in, or having access to restricted areas of a retail establishment's licensed premises.<sup>185</sup>

No license may be issued to:<sup>186</sup>

- A person until the annual license fee is paid;
- An individual whose criminal history indicates that he or she is not of good moral character;
- An entity if the criminal history of any of its officers, directors, stockholders or owners indicates that such individuals are not of good moral character;
- A person financed in whole or in part by any other person whose criminal history indicates that he or she is not of good moral character;
- A person under the age of 21;
- A person who has failed to file any tax return and pay any taxes, interest or penalties relating to a medical or retail marijuana establishment;
- A person who has discharged a sentence for a felony conviction in the five years immediately preceding the application;
- A person who has discharged a sentence for a felony regarding the possession, distribution, manufacturing, cultivation or use of a controlled substance in the 10 years immediately preceding the date of application or five years from May 28, 2013, whichever is longer, except that the Executive Director may grant a license to such a person if the person has a state felony conviction based on possession or use of marijuana or marijuana concentrate that would not be a felony if the person were convicted of the offense on the date of license application;

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<sup>180</sup> § 12-43.4-305(1)(c), C.R.S.

<sup>181</sup> § 12-43.4-309(7)(a), C.R.S.

<sup>182</sup> § 12-43.4-312, C.R.S.

<sup>183</sup> § 12-43.4-306(1)(l), C.R.S.

<sup>184</sup> § 12-43.4-401(2)(b), C.R.S.

<sup>185</sup> § 12-43.4-401(1)(e), C.R.S.

<sup>186</sup> § 12-43.4-306(1), C.R.S.

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- A person who employs another person at a retail establishment who has not submitted fingerprints for a criminal history record check or whose criminal history record check reveals that the person is ineligible for licensure;
  - A sheriff, deputy sheriff, police officer, prosecuting officer or an employee of the Executive Director or a local jurisdiction's licensing authority;
  - A person applying for a license for a location that is currently licensed as a retail food establishment or wholesale food registrant; or
  - A publicly traded company.

All managers and employees of a licensed retail establishment must be Colorado residents as of the date of their respective license applications.<sup>187</sup>

All licenses issued under the Retail Code are valid for one year from the date of issuance,<sup>188</sup> except transporter licenses, which are valid for two years.<sup>189</sup> Licensees are notified of the need to renew 90 days prior to the expiration of the license,<sup>190</sup> and licensees who fail to renew their licenses within 90 days after the expiration date must apply for a new license.<sup>191</sup> The Executive Director may, at his or her discretion, administratively continue a license and accept a later application for renewal.<sup>192</sup>

Each licensee's physical premises, as well as any books and records (which must be retained for three years), are subject to inspection and examination by the Executive Director.<sup>193</sup>

The Executive Director may fine a licensee or suspend or revoke any license issued under the Retail Code.<sup>194</sup> If a licensee faces a suspension period of 14 days or less, the licensee may petition the Executive Director for a fine in lieu of suspension,<sup>195</sup> which may not be less than \$500 and may not exceed \$100,000.<sup>196</sup>

If the Executive Director has objective and reasonable grounds to believe that a licensee has deliberately and willfully violated the Retail Code or the Executive Director's rules, or that the public health, safety or welfare requires emergency action, the Executive Director may summarily suspend a license.<sup>197</sup>

Any disciplinary action imposed by the Executive Director may include an order to destroy some or all of the licensee's retail marijuana or retail marijuana products.<sup>198</sup> In such a case, the licensee has 15 days within which to petition the state District Court in the City and County of Denver for a stay of the order.<sup>199</sup>

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<sup>187</sup> § 12-43.4-309(5), C.R.S.

<sup>188</sup> § 12-43.4-309(5), C.R.S.

<sup>189</sup> § 12-43.4-406(1)(a), C.R.S.

<sup>190</sup> § 12-43.4-310(1), C.R.S.

<sup>191</sup> 1 CCR § 212-2, R 203(C)(3), Retail Marijuana Code Rules.

<sup>192</sup> § 12-43.4-310(2)(b), C.R.S.

<sup>193</sup> § 12-43.4-701, C.R.S.

<sup>194</sup> § 12-43.4-601(1), C.R.S.

<sup>195</sup> § 12-43.4-601(3)(a), C.R.S.

<sup>196</sup> § 12-43.4-601(3)(b), C.R.S.

<sup>197</sup> §§ 12-43.4-601(2) and 24-4-104(4)(a), C.R.S.

<sup>198</sup> § 12-43.4-602(4), C.R.S.

<sup>199</sup> § 12-43.4-602(5), C.R.S.

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All decisions made by the Executive Director are subject to review by the state's district courts.<sup>200</sup>

It is a Class 2 misdemeanor, punishable by between 3 and 12 months imprisonment, a fine of between \$250 and \$1,000, or both, for any person to:<sup>201</sup>

- Consume retail marijuana on the licensed premises of a licensed retail marijuana business;
- Buy, sell, transfer, give away or acquire retail marijuana or retail marijuana products except as allowed by the Retail Code or the state's constitution; or
- Have an unreported financial or direct interest in a license issued pursuant to the Retail Code.

It is also a Class 2 misdemeanor, for any licensee to:<sup>202</sup>

- Be within a limited-access area unless the person's license badge is displayed, or
- Fail to designate areas of ingress and egress for limited-access areas and post signs in conspicuous locations.

Finally, it is a Class 2 misdemeanor for any licensee that sells retail marijuana or retail marijuana products to:<sup>203</sup>

- Display any signs that are inconsistent with local laws or regulations;
- Use advertising that is misleading, deceptive or false or that is designed to appeal to minors;
- Provide public premises for the purpose of consuming retail marijuana or retail marijuana products;
- Have in possession or upon the licensed premises any marijuana, the sale of which is not permitted by the license;
- Have on the licensed premises any retail marijuana, retail marijuana products or retail marijuana paraphernalia that shows evidence of the retail marijuana having been consumed or partially consumed;
- Distribute retail marijuana or retail marijuana products, with or without remuneration, directly to another person using a mobile distribution center;
- Violate certain provisions of the state's Unfair Practices Act as they relate to discriminatory sales or sales below cost; or
- Abandon a licensed premises or otherwise cease operations without notifying the Executive Director and the relevant local jurisdiction at least 48 hours in advance and without accounting for and forfeiting all retail marijuana and retail marijuana products.

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<sup>200</sup> §§ 12-43.4-801 and 24-4-106(4), C.R.S.

<sup>201</sup> §§ 12-43.4-901(1, 2 and 6) and 18-1.3-501(1)(a), C.R.S.

<sup>202</sup> §§ 12-43.4-901(3) and 12-43.4-901(6), C.R.S.

<sup>203</sup> §§ 12-43.4-901(4) and 12-43.4-901(6), C.R.S.



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## Local Regulation of Medical and Retail Marijuana

### MEDICAL MARIJUANA

A local government that opts to allow the commercial cultivation or sale of medical marijuana within its jurisdiction must adopt an ordinance or resolution, as applicable, containing specific licensing standards, or it may consider the provisions of the Medical Code to be the minimum licensing standards.<sup>204</sup> Local governments are expressly authorized to promulgate licensing standards pertaining to:<sup>205</sup>

- Distance restrictions between premises for which local licenses are issued,
- Reasonable restrictions on the size of an applicant's licensed premises, and
- Any other requirements necessary to ensure the control of the premises and the ease of enforcement of the terms and conditions of the license.

Local governments are limited to issuing licenses to:<sup>206</sup>

- Medical marijuana centers,
- OPC operations,
- MMIPs manufacturers,
- Medical marijuana testing facilities,
- Medical marijuana transporters,
- Medical marijuana business operators,
- Marijuana research and development facilities, and
- Marijuana research and development cultivation facilities.

Any application for a local license must be submitted to the Executive Director along with the application for a state license.<sup>207</sup> No medical marijuana center, OPC operation or MMIPs manufacturer may operate until it has been issued the appropriate licenses from both the Executive Director and the local government.<sup>208</sup>

As of Spring 2016, 62 Colorado municipalities allowed at least one type of medical marijuana license and 115 had bans in effect.<sup>209</sup>

As of July 31, 2017, 26 Colorado counties allowed at least one type of medical marijuana license and two more had bans in effect but grandfathered existing businesses. The remaining 36 Colorado counties had complete medical marijuana bans in effect.<sup>210</sup>

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<sup>204</sup> § 12-43.3-301(2)(a), C.R.S.

<sup>205</sup> § 12-43.3-301(2)(b), C.R.S.

<sup>206</sup> § 12-43.3-301(1), C.R.S.

<sup>207</sup> § 12-43.3-301(3), C.R.S.

<sup>208</sup> § 12-43.3-310(2), C.R.S., and 1 CCR 212-1, § M 101.

<sup>209</sup> Colorado Municipal League. *Election Results: Medical Marijuana*. Retrieved May 30, 2018, from [www.cml.org/issues.aspx?taxid=11075](http://www.cml.org/issues.aspx?taxid=11075)

<sup>210</sup> Colorado Counties, Inc. *County Regulatory Status - Medical Marijuana*. Retrieved May 30, 2018, from [ccionline.org/download/Medical-Marijuana-County-Map.pdf](http://ccionline.org/download/Medical-Marijuana-County-Map.pdf)



Local jurisdictions may prohibit the operation of retail marijuana establishments through the enactment of an ordinance or through an initiated or referred measure. Local jurisdictions that permit retail marijuana establishments may enact ordinances or regulations governing the time, place, manner and number of such establishments, as well as the issuance, suspension and revocation of a license issued by the local jurisdiction. No such ordinances or regulations may conflict with the state’s constitution or the Retail Code.<sup>211</sup>

If a particular jurisdiction has not banned retail marijuana establishments, such establishments must obtain a state license and local jurisdiction approval before operating.<sup>212</sup> Importantly, local jurisdictions need not issue licenses to retail marijuana establishments; they can simply “approve” them.

Regardless of whether the local jurisdiction licenses or approves retail marijuana establishments, applicants apply to the Executive Director first, who then forwards a copy of the state application to the relevant local jurisdiction.<sup>213</sup> Similarly, the Executive Director is required to forward to the local jurisdiction, half of the application fee.<sup>214</sup>

As of April 2017, 69 Colorado municipalities allowed at least one type of retail marijuana license, and 8 more had enacted moratoria. Municipalities opting out of retail marijuana totaled 168.<sup>215</sup>

As of August 4, 2017, 25 Colorado counties allowed at least one type of retail marijuana license, of which five prohibited new licensees but allowed the migration of existing medical marijuana licenses to retail marijuana licenses. The remaining 39 Colorado counties had complete bans or moratoria in effect.<sup>216</sup>

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<sup>211</sup> Colo. Const. Art. XVIII, § 16(5)(f).

<sup>212</sup> § 12-43.4-304(1), C.R.S.

<sup>213</sup> § 12-43.4-301(1), C.R.S.

<sup>214</sup> Colo. Const. Art. XVIII, § 16(5)(g)(II).

<sup>215</sup> Colorado Municipal League. *Election Results: Municipal Retail Marijuana Status*. Retrieved May 30, 2018, from [www.cml.org/issues.aspx?taxid=11076](http://www.cml.org/issues.aspx?taxid=11076)

<sup>216</sup> Colorado Counties, Inc. *County Regulatory Status - Recreational Marijuana*. Retrieved May 30, 2018, from [cctionline.org/download/Recreational-Marijuana-County-Map.pdf](http://cctionline.org/download/Recreational-Marijuana-County-Map.pdf)

## Program Description and Administration

The Colorado Medical Marijuana Code (Medical Code) and the Colorado Retail Marijuana Code (Retail Code) each designate the Executive Director of the Department of Revenue (Executive Director) as the state licensing authority. As such, the Executive Director has all rulemaking, licensing and enforcement authority. As a practical matter, the Director of the Marijuana Enforcement Division (Director and MED, respectively) is responsible for the overall implementation of the two codes and rules promulgated thereunder.

Since the MED is tasked with the implementation of both codes, many of the tables and data in this sunset report pertain to the MED's enforcement of both codes. Where possible, code-specific data are presented.

Table 2 illustrates, for the fiscal years indicated, and for both codes, the MED's program expenditures and full-time equivalent (FTE) employees.

**Table 2**  
**Agency Fiscal Information**

Fiscal Year	Total Program Expenditure	FTE
12-13	\$1,805,230	17
13-14	\$6,882,778	35
14-15	\$5,316,667	51
15-16	\$6,786,917	64
16-17	\$8,762,406	88

With respect to FTE, it should be noted that the figures in Table 2 represent the staff employed as of the end of each fiscal year. Fiscal year 12-13 is particularly noteworthy since, at one point during that year, the MED employed 35 FTE. Due to significant budget shortfalls, much of that staff had been reassigned by the end of the fiscal year.

Expenditures and staffing increased appreciably beginning in fiscal year 13-14. This can be attributed to the assumption of regulatory responsibility for retail marijuana.

The 96.5 FTE employed by the MED as of the end of fiscal year 17-18 comprised:

- 1.0 FTE Management—The Director is responsible for management of the MED, budget, rulemaking, public speaking and outreach, responding to executive management and legislative requests/mandates and strategic planning and implementation.
- 1.0 FTE Criminal Investigator IV—The Chief of Licensing and Investigations is responsible for the day-to-day operation of the MED, facilitates Director requests and mandates, and develops and implements policies and processes.
- 8.0 FTE Criminal Investigator III—The Agents-in-Charge are responsible for the operation of the MED's licensing operations, including background investigations, as well as for field enforcement operations.

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- 6.0 FTE Criminal Investigator II (Supervisors)—These investigators supervise field enforcement operations and investigations in the MED’s Lakewood and regional offices, and background investigations at the MED’s headquarters in Lakewood.
  - 4.0 FTE Criminal Investigator II (Non-Supervisors)—These investigators conduct in-depth background, compliance and criminal investigations, perform site compliance inspections and engage in enforcement actions, do not have supervisory duties, but serve as subject matter experts for the MED.
  - 16.0 FTE Criminal Investigator I—These investigators conduct in-depth background, compliance and criminal investigations, perform site compliance inspections and engage in enforcement actions.
  - 2.0 FTE Compliance Investigator III—These investigators supervise investigators in the Data Analysis Section with data analytics and Financial Investigations Section with complex financial investigations.
  - 3.0 FTE Compliance Investigator II (Supervisors)—These investigators supervise compliance investigators who conduct background investigations and field enforcement actions and supervise business license application processing. In addition, they lead training of new employees.
  - 11.0 FTE Compliance Investigator II (Non-Supervisors)—These investigators serve as subject matter experts in different units for the MED. They conduct background investigations, field enforcement actions, work in specialized units such as data analysis, financial investigations, and a training unit.
  - 13.0 FTE Compliance Investigator I—These investigators assist and support background investigations and field enforcement actions.
  - 1.0 FTE General Professional IV—The Communications Specialist manages the MED’s website, develops and maintains data reports, facilitates special projects and is responsible for processing all Colorado Open Records Act and subpoena requests.
  - 1.0 FTE Program Manager II—This position manages the Analysis and Planning Section.
  - 1.0 FTE Policy Advisor VI—This position facilitates the MED’s administrative disciplinary action process, working in conjunction with the Attorney General’s Office, and promulgates and modifies the publication “Colorado Marijuana Laws and Regulations.”
  - 1.0 FTE Policy Advisor IV—This position assists and supports in the promulgating and modifying of the publication “Colorado Marijuana Laws and Regulations.”
  - 2.5 FTE Legal Assistant II—These positions assist and support the MED administrative disciplinary action process.
  - 2.0 FTE Office Manager—These positions manage administrative business and occupational licensing activities.
  - 2.0 FTE Program Assistant II—These positions provide administrative support to the Director, Chief of Investigations and other staff.
  - 12.0 FTE Administrative Assistant III—These positions are line staff engaged in business and occupational licensing activities.
  - 9.0 FTE Administrative Assistant II—These positions provide administrative support to business and occupational licensing activities.

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MED staff is distributed among four offices: the headquarters in Lakewood and regional offices in Colorado Springs, Grand Junction and Longmont.

## Licensing

The Executive Director issues two basic types of licenses: occupational and business. Occupational licenses are issued to individuals, whereas business licenses are generally issued to entities. Although both the Retail Code and Medical Code envision similar types of licenses, the terminology used in the two codes is inconsistent.

### Occupational Licensing

The Executive Director issues three types of occupational licenses:

- **Support** licenses are issued to individuals who perform duties that support the marijuana business' operations, such as sales clerks, cultivation staff, trimmers and cooks;
- **Key** licenses are issued to individuals who perform duties that are central to the marijuana business' operations and have the highest level of responsibility; and
- **Associated Key** licenses are issued to individuals who are owners of marijuana businesses and anyone who controls or is in a position to control a marijuana business.

Although all occupational license types are authorized under both the Retail and Medical Codes, most are issued under the Medical Code because they are valid for two years. Occupational licenses in the retail marijuana industry are constitutionally limited to being valid for only one year, while no such constraint exists for the medical marijuana industry. As a result, the MED allows those holding an occupational license issued under the Medical Code to work in both retail and medical marijuana businesses.

Table 3 illustrates, for the fiscal years indicated, the number of active support and key licenses issued. Table 3 does not include data pertaining to associated key licenses. Such data may be found in Table 4.

**Table 3**  
**Occupational Licensing**

Fiscal Year	Key	Support	Total
12-13	1,372	4,529	5,901
13-14	2,397	8,892	11,289
14-15	5,003	16,333	21,336
15-16	7,672	20,092	27,764
16-17	10,439	24,020	34,459

As the marijuana industry has grown, so too has the number of people working in it, as demonstrated by the increasing number of occupational licenses issued. The substantial

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increases in fiscal years 13-14 and 14-15 coincide with the legalization of retail marijuana under the Retail Code.

To obtain an initial key or support license, the applicant must complete the appropriate application and appear in person at a MED office. As of this writing, the approximate wait time for an appointment at any office is three weeks. Licensees must also appear in person to renew these licenses, but may do so on a walk-in basis at the Lakewood office only.

The license application requires the applicant to provide proof of age and residency, as well as attest that none of several disqualifiers (e.g., status as a law enforcement officer or employee of a local licensing authority) are applicable. The application further requires the applicant to disclose several matters related to the applicant's criminal history.

When the applicant arrives at the MED office, the application and the applicable fees are collected, along with any support documentation (e.g., documents indicating final dispositions of any arrests or criminal convictions, evidence of Colorado residency and photographic identification). Applicants can pay the application and license fee of \$75 with cash, check or money order. If any element of the application, including court documents evidencing disposition, is missing, the application is not accepted until the missing documents can be supplied.

MED staff runs preliminary criminal history background checks based on the applicant's name and Social Security number through a Colorado Bureau of Investigation database and the National Crime Information Center database.

If there are problems, the applicant is immediately notified and given an opportunity to take appropriate steps. If there are no problems, the applicant is informed of such and is also informed that his or her photographic license badge will be mailed to him or her as soon as a fingerprint-based criminal history background check is completed by the Federal Bureau of Investigation (usually within 7 to 10 days). The applicant cannot begin working in the marijuana industry until he or she receives the badge.

The process for obtaining a key license is essentially the same as that for a support license, except that the applicant must surrender his or her support license, if applicable. Additionally, key license applicants must disclose some of their financial history, particularly with regard to any other professional licenses, bankruptcies and judgments. The total application and license fee for an initial key license is \$250.

Occupational licenses can be renewed by mail or online. The fee to renew either a support or key license is \$75.

The process for obtaining an associated key license is substantially similar to that of obtaining a support or key license. The individuals are photographed and fingerprinted at the time they appear at the MED, or they can have their fingerprints taken at a local law enforcement agency, to submit the underlying business license application, and their license badges are not sent to them until the underlying business license is issued.

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The application for an associated key license delves deeper into the applicant’s financial history and relationship to the business. It also requires the applicant to disclose his or her employment history, income and character references.

The initial application and license fee is \$800, and the fee to renew is \$500. These licenses are valid for one year from the date of issuance.

Table 4 illustrates, for the fiscal years indicated, the number of associated key licenses that have been approved, denied and withdrawn, but not the total number of active licenses. The data in Table 4 reflect new associated key license applications of businesses licensed under both codes.

**Table 4  
Associated Key Licensing**

<b>Fiscal Year</b>	<b>Pending</b>	<b>Approved</b>	<b>Denied</b>	<b>Withdrawn</b>	<b>Total</b>
12-13	0	42	2	1	45
13-14	58	151	1	8	47
14-15	4	1,096	101	124	1,325
15-16	55	392	1	16	464
16-17	69	359	2	24	454

The increases in fiscal year 14-15 can be attributed to the initial implementation of the Retail Code.

Figures in the “Approved” column indicate the number of license applications approved, but not necessarily issued. Associated key licenses are not issued until and unless the underlying business license is ultimately issued.

Figures in the “Pending” column reflect applications that were still pending as of the last day of the indicated fiscal year.

Since August 2017, the Executive Director may grant an occupational license, for up to two years, to individuals who are not Colorado residents provided they are enrolled in a marijuana-based workforce development training program operated by an entity licensed under either code or by a school approved by the Colorado Department of Higher Education’s Division of Private Occupational Schools. As of June 30, 2018, four such licenses had been granted.

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## Business Licensing

Just as each owner of a medical or retail marijuana business must be licensed, so too must the business itself. While the two codes vary in their nomenclature for these business types, the functions performed by the various licensees under the two codes are substantially similar. Table 5 provides a side-by-side comparison of the licenses issued under the two codes.

**Table 5  
Business Licensing**

<b>Retail Code</b>	<b>Medical Code</b>
Retail Marijuana Store	Medical Marijuana Center
Retail Marijuana Cultivation Facility	Medical Marijuana Optional Premises Cultivation (OPC)
Retail Marijuana Product Manufacturing Facility	Medical Marijuana Infused Products (MMIPs) Manufacturer
Retail Marijuana Testing Facility	Medical Marijuana Testing Facility
Retail Marijuana Transporter	Medical Marijuana Transporter
Retail Marijuana Operator	Medical Marijuana Operator
Not Applicable	Marijuana Research & Development
Not Applicable	Marijuana Research & Development Cultivation

New business license applications may be mailed to the MED or they may be submitted to the MED in person at any MED office. At some point, each of the owners must physically appear so that they can be fingerprinted (this can also be done by a local law enforcement agency) and photographed as part of the processing of their associated key license applications. Walk-ins are welcome at the Lakewood office, or appointments can be made online. The wait time for an appointment is approximately three weeks.

A separate application package must be submitted for each license sought, and must include, at a minimum:

- An application form;
- Application and license fees;
- An associated key license application for each owner;
- A copy of the operating agreement if the applicant is a limited liability company;
- A copy of the articles of incorporation and bylaws if the applicant is a corporation;
- Copies of any financing documents, such as promissory notes, securing interests or other loan documents;
- A copy of a current certificate of good standing issued by the Colorado Secretary of State;
- A copy of a Trade Name Registration from the Colorado Secretary of State, if applicable;



- A copy of the lease for the property where the business is to be located, or other documentation evidencing a right to possess that property;
- A copy of the floor plans for each facility to be licensed; and
- A copy of a current state sales tax license.

Additionally, applicants for medical marijuana business licenses must submit evidence of having obtained or applied for a medical marijuana license from the local licensing authority in the jurisdiction in which the business will operate. Under the Retail Code, retail marijuana business license applicants submit their local licensing application to the MED, which then forwards it, along with the applicable fees, to the local licensing authority.

The fees that must be paid vary depending on the type of license sought. Table 6 below illustrates the fees assessed under the Retail Code for fiscal year 18-19.

**Table 6  
Retail Code Fees**

Retail Code	Initial License	Renewal License
Retail Marijuana Store	\$4,500	\$1,800
Retail Marijuana Cultivation Facility - Tier 1 <sup>217</sup>	\$4,000	\$1,800
Retail Marijuana Cultivation Facility - Tier 2 <sup>218</sup>	Not Applicable	\$2,900
Retail Marijuana Cultivation Facility - Tier 3 <sup>219</sup>	Not Applicable	\$3,600
Retail Marijuana Cultivation Facility - Tier 4 <sup>220</sup>	Not Applicable	\$5,100
Retail Marijuana Cultivation Facility - Tier 5 <sup>221</sup>	Not Applicable	\$7,100
Retail Marijuana Product Manufacturing Facility	\$4,000	\$1,800
Retail Marijuana Testing Facility	\$2,000	\$1,800
Retail Marijuana Transporter (two year license)	\$4,900	\$4,700
Retail Marijuana Operator	\$2,700	\$2,500

<sup>217</sup> Tier 1 Cultivation Facilities may grow up to 1,800 plants.

<sup>218</sup> Tier 2 Cultivation Facilities may grow between 1,801 and 3,600 plants.

<sup>219</sup> Tier 3 Cultivation Facilities may grow between 3,601 and 6,000 plants.

<sup>220</sup> Tier 4 Cultivation Facilities may grow between 6,001 and 10,200 plants.

<sup>221</sup> Tier 5 Cultivation Facilities may grow between 10,201 and 13,800 plants.

All retail marijuana cultivation facilities apply for initial licensure as Tier 1 facilities; thus, there are no “initial” fees for Tiers 2 through 5. They may climb the ladder of tiers after at least one harvest season of sales demonstrating they can sell the marijuana that they have grown. Those seeking to grow more than the 13,800 plants allowed under Tier 5 may do so, upon application and approval, in increments of 3,600 plants and for a fee of \$7,100 plus \$800 for each additional increment of 3,600 plants.

Table 7 illustrates the fees assessed under the Medical Code for fiscal year 18-19.

**Table 7  
Medical Code Fees**

Medical Code	Initial License	Renewal License
Medical Marijuana Center - Type 1 <sup>222</sup>	\$9,000	\$2,300
Medical Marijuana Center - Type 2 <sup>223</sup>	\$16,000	\$5,300
Medical Marijuana Center - Type 3 <sup>224</sup>	\$22,000	\$7,300
OPC	\$2,500	\$1,800
MMIPs Manufacturing Facility	\$2,500	\$1,800
Medical Marijuana Testing Facility	\$2,500	\$1,800
Medical Marijuana Transporter (two-year license)	\$5,400	\$4,700
Medical Marijuana Operator	\$3,200	\$2,500
Marijuana Research & Development	\$2,500	\$1,800
Marijuana Research & Development Cultivation	\$3,500	\$1,800

Until the passage of House Bill 18-1381, medical marijuana businesses had to have vertically integrated business structures such that a medical marijuana center had to be tied to an OPC and 70 percent of what the center sold had to come from that OPC. This dropped to 50 percent as of July 1, 2018. As a means of managing production, medical centers often recruit patients to designate that particular center as their primary center, thus enabling that center’s OPC to grow the plants to which those patients are entitled. As a result, the licensing regime under the Medical Code has been based on the number of patients registered with a particular center. However, effective July 1, 2019,

<sup>222</sup> Type 1 Medical Marijuana Centers may serve up to 300 patients.

<sup>223</sup> Type 2 Medical Marijuana Centers may serve between 301 and 500 patients.

<sup>224</sup> Type 3 Medical Marijuana Centers may serve more than 500 patients.

mandatory vertical integration will no longer be required and production management is expected to more closely resemble that of the retail marijuana industry.

With the exception of the transporter license type, all retail and medical marijuana business licenses are valid for one year. Pursuant to statute, transporter licenses are valid for two years.

Table 8 illustrates, for the fiscal years indicated, the number of each type of business license issued under both codes.

**Table 8  
Licensing Data**

License Type	FY 12-13	FY 13-14	FY 14-15	FY 15-16	FY 16-17
Medical Marijuana Center	367 <sup>225</sup>	436 <sup>226</sup>	457 <sup>227</sup>	492 <sup>228</sup>	509 <sup>229</sup>
Retail Marijuana Store	Not Applicable	212	372	435	492
Medical OPC Operation	467	729	751	785	765
Retail Marijuana Cultivation <sup>230</sup>	Not Applicable	279	471	572	692
MMIPs Manufacturer	77	149	174	223	256
Retail Marijuana Products Manufacturers	Not Applicable	63	132	193	271
Medical Testing Facilities	Not Applicable	Not Applicable	Not Applicable	13	14
Retail Testing Facilities	Not Applicable	8	19	15	13
Medical Transporters	Not Applicable	Not Applicable	Not Applicable	0	1
Retail Transporters	Not Applicable	Not Applicable	Not Applicable	0	2
Medical Operators	Not Applicable	Not Applicable	Not Applicable	0	3
Retail Operators	Not Applicable	Not Applicable	Not Applicable	Not Applicable	5

Recall that retail marijuana sales began in January 2014, thus there was no licensing activity under the Retail Code prior to fiscal year 13-14.

<sup>225</sup> Total includes 336 Tier 1 Centers, 18 Tier 2 Centers and 13 Tier 3 Centers.

<sup>226</sup> Total includes 398 Tier 1 Centers, 22 Tier 2 Centers and 16 Tier 3 Centers.

<sup>227</sup> Total includes 419 Tier 1 Centers, 25 Tier 2 Centers and 13 Tier 3 Centers.

<sup>228</sup> Total includes 445 Tier 1 Centers, 28 Tier 2 Centers and 19 Tier 3 Centers.

<sup>229</sup> Total includes 449 Tier 1 Centers, 37 Tier 2 Centers and 23 Tier 3 Centers.

<sup>230</sup> A tier-by-tier breakdown of the totals is not available.

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Similarly, various other license types were created after the enactment of the Retail Code and the Medical Code. Thus, “Not Applicable” in Table 8 indicates years in which the indicated license types did not yet exist.

As the data in Table 8 indicate, the number of licenses issued under both codes and in all categories has demonstrated a mostly upward trend.

There are several classifications of individuals and entities that may have a financial interest in a licensee, yet not direct ownership:

- **Qualified Limited Passive Investors** are natural persons who own less than a five percent share or shares of stock in a licensee. These investors are considered to be direct beneficial interest owners.<sup>231</sup> As of July 2018, eight had been approved, all of whom were Colorado residents, two were pending and one had converted to ownership.
- **Qualified Institutional Investors** include certain federally authorized banks, insurance companies, investment companies, investment advisors, trust funds, pension plans or any group thereof. These investors are considered to be indirect beneficial interest owners.<sup>232</sup> As of July 2018, one of these types of investors had been approved, and one application had been withdrawn.
- **Permitted Economic Interest Holders** are natural persons who have entered into agreements to obtain an ownership interest in a licensee and whose right to convert into an ownership interest is contingent upon obtaining a license as a direct beneficial interest owner. These individuals are considered to be indirect beneficial interest owners.<sup>233</sup> As of July 2018, 178 had been approved and 15 had converted into ownership interests, 14 applications were pending and 27 applications had been withdrawn.
- **Employee Profit Sharing Plan Participants** are employees who participate in a licensee’s profit sharing plan. As of July 2018, none existed, although one application had been submitted and then withdrawn.
- **Commercially Reasonable Royalty Holder (more than 30 percent)** are individuals or entities that receive a royalty of more than 30 percent in exchange for a licensee’s use of the royalty interest holder’s intellectual property. These holders are considered to be indirect beneficial interest holders.<sup>234</sup> As of July 2018, five had been approved and one application had been withdrawn.
- **Commercially Reasonable Royalty Holder (30 percent or less)** are individuals or entities that receive a royalty of 30 percent or less in exchange for a licensee’s use of the royalty interest holder’s intellectual property. These holders are considered to be indirect beneficial interest holders.<sup>235</sup> As of July 2018, 13 had been approved and 2 applications had been withdrawn.

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<sup>231</sup> 1 CCR § 212-2, R 103, Retail Marijuana Code Rules; 1 CCR § 212-1, M 103, Medical Marijuana Code Rules.

<sup>232</sup> 1 CCR § 212-2, R 103, Retail Marijuana Code Rules; 1 CCR § 212-1, M 103, Medical Marijuana Code Rules.

<sup>233</sup> 1 CCR § 212-2, R 103, Retail Marijuana Code Rules; 1 CCR § 212-1, M 103, Medical Marijuana Code Rules.

<sup>234</sup> 1 CCR § 212-2, R 103, Retail Marijuana Code Rules; 1 CCR § 212-1, M 103, Medical Marijuana Code Rules.

<sup>235</sup> 1 CCR § 212-2, R 103, Retail Marijuana Code Rules; 1 CCR § 212-1, M 103, Medical Marijuana Code Rules.

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Each of these interests must be disclosed to the MED and the MED must properly investigate each. As a result, there are fees corresponding to each. Table 9 below delineates the fees for each charged in fiscal year 18-19.

**Table 9**  
**Financial Interest Fees**

<b>Interest Type</b>	<b>Fee</b>
Qualified Limited Passive Investor - Limited Initial Background Check	\$75
Qualified Limited Passive Investor - Full Background Check for Cause	\$125
Qualified Institutional Investor	\$200
Permitted Economic Interest Holder	\$400
Employee Profit Sharing Plan Participants	\$200
Commercially Reasonable Royalty Holder of More than 30 Percent	\$400
Commercially Reasonable Royalty Holder of 30 Percent or Less	\$200

In addition to the background checks performed on the owners of an applicant, MED staff also conducts a more comprehensive investigation of the business itself. For example, MED staff looks to ensure that all owners are identified and have submitted the appropriate occupational license or other applications. Staff also investigates any financing that might be in place. MED staff seeks to ensure that anyone who shares in the profits of a licensee has been properly disclosed and vetted.

MED investigators also conduct other types of routine investigations that are not the result of a complaint or an indication that anything is amiss. For example, investigations resulting from a change in ownership or a change in location are routine.

Table 10 illustrates, for the fiscal years indicated, the number and types of investigations performed by MED staff.

**Table 10**  
**Investigations Summary**

Type	FY 12-13	FY 13-14	FY 14-15	FY 15-16	FY 16-17
Corporate Background Investigation	72	612	45	818	549
Change of Ownership	166	379	31	573	590
Individual Background Investigation	64	240	34	620	560
Change of Location	117	259	12	208	72
Modification of Premises	89	245	18	507	444
Change of Trade Name	16	61	3	139	112
Renewal Investigation	0	299	123	2,569	3,113
Non-Qualified Sales Check	Not Applicable	Not Applicable	119	138	229
Criminal & Regulatory Enforcement Actions	Not Available	Not Available	564	1,835	872
<b>Total</b>	<b>524</b>	<b>2,095</b>	<b>949</b>	<b>7,407</b>	<b>6,541</b>

Year to year fluctuations in the number and types of investigations can be attributed to several factors, such as initial implementation of the Retail Code, changes in computer systems and terminology and changes in the way certain items are tracked.

Table 10 includes investigations conducted pursuant to both codes. Importantly, one investigation could encompass multiple licenses issued under either or both codes.

The category “Criminal & Regulatory Enforcement Actions” is somewhat of a catch-all category and can include items such as assisting other agencies, investigator-initiated field visits, licensing inspections and more. Until fiscal year 14-15, these were tracked individually, but since then, tracking has become more granular and it is no longer practical to report them individually.

By law, business licenses issued under the Retail Code cannot be issued sooner than 45 days after the date of application, nor later than 90 days after the date of application. The Retail Code also requires applicants to first apply to MED and then to apply for any local licenses from the local licensing authority. As a result, the MED issues a conditional license until such time as the local licensing authority issues its licenses.

Neither of these complications apply to business licenses issued under the Medical Code.

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## Responsible Vendor Training Programs

A licensed marijuana business may receive the designation of “responsible vendor” after all of its employees who handle marijuana, all of its managers and all resident on-site owners successfully complete an Executive Director-approved responsible vendor training program.<sup>236</sup> Such a designation is valid for two years and to be maintained, all new employees, managers and owners must complete a training program within 90 days of hire or becoming an owner.<sup>237</sup> Licensees with the designation must retain all records pertaining to such. The Executive Director and any local licensing authority must consider the designation as a mitigating factor when imposing discipline on the licensee.<sup>238</sup>

An approved training program must consist of at least two hours of classroom instruction pertaining to:<sup>239</sup>

- Marijuana’s effect on the human body;
- Sales to minors;
- Quantity limitations on transfers to patients and consumers;
- Acceptable forms of identification; and
- Key state laws and rules affecting owners, managers and employees, such as:
  - Local and state licensing enforcement,
  - Compliance with inventory tracking system regulations,
  - Administrative and criminal liability,
  - License sanctions and court sanctions,
  - Waste disposal,
  - Health and safety standards,
  - Patrons prohibited from bringing marijuana onto licensed premises,
  - Permitted hours of sale,
  - Maintenance of records,
  - Privacy issues, and
  - Prohibited purchases.

To become an approved program, the provider must submit its program to the Executive Director, along with the application fee of \$850. Once approved, the annual renewal fee is \$350.

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<sup>236</sup> § 12-43.3-1102(1), C.R.S.

<sup>237</sup> § 12-43.3-1102(1)(c), C.R.S.

<sup>238</sup> §§ 12-43.3.1102(2 and 3), C.R.S.

<sup>239</sup> 1 CCR §§ 212-1 M 408(B and C), Medical Marijuana Code Rules, and 1 CCR §§ 212-2 R 407(B and C), Retail Marijuana Code Rules.



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An approved program provider must maintain its training records for three years. Table 11 illustrates, for the fiscal years indicated, the number of training programs approved by the Executive Director.

**Table 11**  
**Responsible Vendor Training Programs**

Fiscal Year	Number of Programs
13-14	0
14-15	0
15-16	7
16-17	3

The responsible vendor training program and designation were created in 2013, so no data are available for the period prior to this time. No explanation is readily available as to why no programs were approved until fiscal year 15-16 or why there was such a precipitous decline the following year.

## **Complaints & Disciplinary Actions**

The Executive Director receives complaints from a variety of sources, including members of the public, licensees and MED staff. Staff may initiate a complaint when a routine investigation, for example a background investigation or a field investigation, reveals possible violations.

Complaints are tracked as “Criminal & Regulatory Enforcement Actions” and data pertaining to them may be found in Table 10.

When a complaint is received, it is assigned to an investigator. If the complaint appears to be non-jurisdictional (e.g., home grows), the investigator may forward the information to local law enforcement and/or dismiss the complaint.

If the case is jurisdictional, the investigator begins the investigation. Depending on the issue, the investigator may conduct a site visit and he or she may contact local law enforcement to determine if that agency is interested in joining the investigation.

If the complaint is unfounded, it is closed. However, if a violation is found, the MED’s progressive disciplinary process is implemented.

The level of discipline taken is determined, in part, by the severity and type of violation, and whether there are any mitigating or aggravating circumstances. In short, the

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Executive Director classifies all violations as license infractions, license violations or license violations affecting public safety.<sup>240</sup>

License infractions tend to be the least severe and may include failure to display required badges, unauthorized modifications of the premises of a minor nature or failure to notify the Executive Director of a minor change in ownership. Possible penalties include a verbal or written warning, license suspension, license restriction, a fine per individual violation or a fine in lieu of suspension of up to \$10,000.<sup>241</sup>

License violations tend to be more severe, but generally do not have an immediate impact on the health, safety and welfare of the public. These may include advertising or marketing violations, packaging or labeling violations that do not directly impact safety, failure to maintain minimum security requirements, failure to keep and maintain adequate business books and minor clerical errors in the MED's seed-to-sale inventory tracking system. Possible penalties include written warnings, license suspension, a fine per individual violation, a fine in lieu of suspension of up to \$50,000, license restrictions and license revocation.<sup>242</sup>

License violations affecting public safety are the most severe types of violations and include consuming marijuana on a licensed premises, marijuana sales in excess of transaction limits, permitting the diversion of marijuana outside of the regulated system, possessing marijuana from outside the regulated system, misstatements or omissions in the MED's seed-to-sale inventory tracking system and packaging and labeling violations that directly impact safety. Such violations may also include selling retail marijuana to someone under 21 years of age and selling medical marijuana to someone who is not a patient. Possible penalties include license suspension, license restrictions, a fine per individual violation, a fine in lieu of suspension of up to \$100,000 and license revocation.<sup>243</sup>

Mitigating and aggravating factors may include:<sup>244</sup>

- Whether the licensee took any actions to prevent the violation;
- The licensee's past history of success or failure with compliance inspections;
- Whether the licensee has taken any actions to correct the violation;
- Whether the licensee has previously committed any violation;
- The circumstances surrounding the violation;
- Whether an owner or manager committed the violation, or directed an employee to commit the violation; and

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<sup>240</sup> 1 CCR § 212-1, M 1307(A), Medical Marijuana Code Rules, and 1 CCR § 212-2, R 1307(A), Retail Marijuana Code Rules.

<sup>241</sup> 1 CCR § 212-1, M 1307(A)(3), Medical Marijuana Code Rules, and 1 CCR § 212-2, R 1307(A)(3), Retail Marijuana Code Rules.

<sup>242</sup> 1 CCR § 212-1, M 1307(A)(2), Medical Marijuana Code Rules, and 1 CCR § 212-2, R 1307(A)(2), Retail Marijuana Code Rules.

<sup>243</sup> 1 CCR § 212-1, M 1307(A)(1), Medical Marijuana Code Rules, and 1 CCR § 212-2, R 1307(A)(1), Retail Marijuana Code Rules.

<sup>244</sup> 1 CCR § 212-1, M 1307(C), Medical Marijuana Code Rules, and 1 CCR § 212-2, R 1307(C), Retail Marijuana Code Rules.

- Whether the licensee has made any good faith efforts to prevent the violations, such as maintaining proper supervision of employees, providing employee training or possessing a responsible vendor designation.

The Executive Director does not track violations in a way that lends itself to reporting such data. Rather, emphasis has been placed on tracking outcomes. Table 12 illustrates, for the calendar years indicated, the number and types of agency actions taken against retail and medical marijuana business licenses, as well as the number of licenses involved.

**Table 12**  
**Administrative Actions/Number of Licenses Involved**

Actions	2014	2015	2016	2017
Assurance of Voluntary Compliance	5/9	34/81	8/44	5/20
Denial	34/77	21/28	23/47	84/93
Order to Show Cause	29/99	53/160	41/131	12/33
Revocations	1/3	7/37	10/20	4/11
Stipulation, Agreement and Order	30/153	58/226	105/320	75/236
Summary Suspension	7/30	25/49	39/52	30/74
<b>Total</b>	<b>106/371</b>	<b>198/581</b>	<b>226/614</b>	<b>210/467</b>

Data for fiscal year 12-13 are not available due to a change in computer systems. The data in Table 12 demonstrate a clear upward trend in administrative actions. This can be attributed to an ever-increasing license population as well as increased staffing at the MED and the Attorney General’s Office dedicated to enforcement. These data also clearly demonstrate that it is common for a single administrative action to involve multiple licenses.

In fiscal year 14-15, the Executive Director began accepting Assurances of Voluntary Compliance (AVCs). An AVC may include a stipulation for a payment commensurate with the acts or practices involved and an amount necessary to restore money or property which may have been acquired by the alleged violator because of the acts or practices. An AVC does not constitute an admission of a violation, but failure to comply with the terms of an AVC constitutes *prima facie* evidence of a violation.<sup>245</sup>

<sup>245</sup> 1 CCR § 212-1, M 1204, Medical Marijuana Code Rules, and 1 CCR § 212-2, R 1204, Retail Marijuana Code Rules.

Table 13, illustrates, for the fiscal years indicated, the number and value of fines imposed on medical and retail licensees.

**Table 13**  
**Fines**

Fiscal Year	Industry Segment	Total Value of Fines Imposed	Number of Fines Imposed
14-15	Retail	\$93,000	6
	Medical	\$348,000	12
15-16	Retail	\$282,833	19
	Medical	\$334,817	19
16-17	Retail	\$682,250	45
	Medical	\$364,750	17

Data relating to fines imposed prior to fiscal year 14-15 are not available, as staff began compiling such data in a new manner beginning early in fiscal year 14-15.

The substantial increase in fines imposed on the retail marijuana industry in fiscal year 16-17 can be attributed to an increased focus on investigations and administrative actions pertaining to underage sales.

Finally, MED investigators may place an administrative hold on marijuana inventory to prevent destruction of evidence, diversion or other threats to public safety. This process allows the licensee to retain its inventory pending the investigation and to continue its operations, unlike with a summary suspension. The Executive Director has, by rule, articulated the process that licensees must follow to, among other things, segregate inventory subject to the administrative hold from other inventory, security requirements and prohibitions on transporting such inventory.<sup>246</sup> Data regarding administrative holds are not tracked, but rather are retained in individual investigations files.

## Testing Facility Certification

The Colorado Department of Public Health and Environment (CDPHE) provides laboratory-related services to the regulated marijuana industry and the MED by recommending certification of testing facilities to the MED and by administering a proficiency testing program for those facilities.

Rules promulgated under the Retail and Medical Codes require regulated marijuana to be tested in five categories:

- Microbials (bacteria and fungi),
- Mycotoxins (toxins produced by fungi),

<sup>246</sup> 1 CCR § 212-1, M 1202(B), Medical Marijuana Code Rules, and 1 CCR § 212-2, R 1202(B), Retail Marijuana Code Rules.

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- Residual solvents,
  - Pesticides, and
  - Potency.

Before a marijuana testing facility can begin accepting samples from MED-licensed businesses, the testing facility must first be licensed and certified by MED. To obtain certification, the testing facility must be recommended for certification by CDPHE in each of the aforementioned testing categories before providing those testing services to MED licensees.

First, the testing facility must be licensed by MED. Next, it must contact CDPHE to begin the approval process.

After the testing facility establishes analytical testing methods and associated operating procedures, the first step in the CDPHE approval process is for the testing facility to conduct an internal self-audit to evaluate compliance with certification requirements. The general self-audit for a testing facility examines:

- Personnel qualifications,
- Standard operating procedures manuals,
- Analytical processes,
- Proficiency testing,
- Quality control and quality assurance,
- Security,
- Sample tracking,
- Specimen retention,
- Laboratory space,
- Records, and
- Results reporting.

Each testing category has its own self-audit requirements specific to the individual categories. In general, however, each requires an assessment of the testing facility's:

- Standard operating procedures,
- Validation processes,
- Analytical processes,
- Quality control and quality assurance measures, and
- Reporting requirements.

Once the self-audits are completed and all identified non-conformances are properly addressed and corrected, the testing facility may apply to CDPHE for an inspection. This application process includes submission of the testing facility's quality assurance manuals, standard operating procedures, validation summaries, the qualifications of relevant personnel and payment of the appropriate fee. The cost to obtain approval is \$500 for the first testing category and \$150 for each additional category.

CDPHE staff then conducts a desk audit of the documents submitted and if they are acceptable, an onsite inspection is conducted. The fee for the desk audit is \$150 and the fee for the onsite inspection is \$250.

Table 14 below illustrates, for the fiscal years indicated, the number of pre-certification inspections CDPHE conducted of marijuana testing facilities.

**Table 14  
Pre-Certification Inspections of Testing Facilities**

Fiscal Year	Potency	Residual Solvents	Microbial	Mycotoxins	Pesticides
13-14	5	0	0	0	0
14-15	12	8	7	0	0
15-16	11	8	11	0	0
16-17	10	12	10	0	0
17-18	12	10	12	0	9

CDPHE did not begin approving testing facilities in the categories of mycotoxins or pesticides until early 2018. Thus, no data are available for those categories prior to this time.

Within 15 days of the inspection, CDPHE provides the testing facility with an inspection report. The facility must provide a written plan of correction to address the identified deficiencies to CDPHE within 15 days of receiving the report. CDPHE then reviews the plan and supporting documentation to determine acceptability of the corrective actions. If CDPHE approves of the plan and finds that the testing facility should be certified, it notifies MED of such. If MED grants certification, the facility may begin testing marijuana for MED licensees.

Table 15 illustrates, for the fiscal years indicated, the number of testing facilities receiving positive recommendations from CDPHE.

**Table 15  
Positive Certification Recommendations of Testing Facilities**

Fiscal Year	Potency	Residual Solvents	Microbial	Mycotoxins	Pesticides
13-14	5	0	0	0	0
14-15	10	6	3	0	0
15-16	11	8	12	0	0
16-17	9	9	10	0	0
17-18	12	9	10	0	6

As Table 15 illustrates, testing for mycotoxins and pesticides is just beginning.

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If CDPHE does not approve the plan of correction, CDPHE will issue a negative recommendation. Table 16 illustrates, for the fiscal years indicated, the number of negative recommendations it has made to MED.

**Table 16**  
**Negative Certification Recommendations of Labs**

Fiscal Year	Number of Negative Certification Recommendations
13-14	0
14-15	9
15-16	3
16-17	2
17-18	1

As the data in Table 16 demonstrate, relatively few testing facilities received negative recommendations.

The data in Tables 14, 15 and 16 do not necessarily add up for several reasons. First, inspection and recommendation processes may cross fiscal years. For example, a facility may have been inspected in June, but the certification recommendation was not made until July. Next, the number of negative certification recommendations reported in Table 16 resulted from both pre-certification inspections and desk audits. For example, a testing facility could apply for a pre-certification inspection, but during the desk audit, CDPHE determined that the facility was not eligible for inspection (and therefore certification) due to significant deficiencies in the facility’s processes, systems or methodologies.

Once certified, CDPHE inspects each testing facility for each testing category once each year. Additionally, certified marijuana testing facilities must participate in proficiency testing twice each year in each approved category. The goal of such tests is to ensure that the individual marijuana testing facilities can obtain the same or similar test results to ensure consistency from one testing facility to another. During proficiency testing, CDPHE or a third party prepares a test sample that is then tested by each licensed and approved testing facility. Each facility provides its results to CDPHE.



Table 17 illustrates the date and type of proficiency test conducted between March 2016 and June 2018, as well as the number of testing facilities participating and the results.

**Table 17  
Proficiency Testing**

Date	Test Category	Number of Testing Facilities Participating	100%	80-100%	<80%
3/7/2016	Flower Potency	12	12	0	0
6/1/2016	Flower Potency	12	12	0	0
8/12/2016	Flower Potency	12	12	0	0
6/1/2017	Concentrate Potency	10	7	2	1
6/1/2017	Edibles Potency	10	7	2	1
6/1/2017	Flower Potency	10	7	2	1
12/12/2017	Microbials	10	9	0	1
12/12/2017	Pesticides	9	7	2	0
12/12/2017	Residual Solvents	10	9	0	1
3/9/2018	Flower Potency	12	12	0	0
3/9/2018	Edibles Potency	12	12	0	0
3/9/2018	Concentrate Potency	12	12	0	0
5/24/2018	Microbials	10	10	0	0
5/24/2018	Residual Solvents	10	4	3	3
5/24/2018	Pesticides	10	9	1	0

A result of “<80%” indicates that the testing facility incorrectly identified at least 20 percent of the total number of analytes and thus failed the proficiency test. A result of anything less than 100 percent indicates the testing facility had an incorrect result for one or more individual analytes, but is not considered to be a failed proficiency test. A result of “100%” indicates that the testing facility correctly identified all analytes.

MED rules require licensed testing facilities to participate in proficiency testing with continued satisfactory performance.<sup>247</sup> If a facility receives a result of “80-100%,” remedial action must be taken. A score of “<80%” is considered unsatisfactory and may result in license limitation, suspension or revocation.<sup>248</sup> There have been no actions based on these grounds.

As of this writing, CDPHE is in the process of establishing a reference laboratory, which, ideally, will create all of the samples used in proficiency testing. This should add greater confidence to the proficiency tests, since CDPHE will be creating the test

<sup>247</sup> 1 CCR § 212-1 M 707(C), Medical Marijuana Code Rules, and 1 CCR § 212-2 R 707(C), Colorado Retail Marijuana Code Rules.

<sup>248</sup> 1 CCR §§ 212-1 M 707(G, H and I), Medical Marijuana Code Rules, and 1 CCR §§ 212-2 R 707(G, H and I), Colorado Retail Marijuana Code Rules.

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samples. Such a lab may also, at some point, be used as a sort of referee for contested test results.

Finally, with the passage of House Bill 18-1422, all marijuana testing facilities must also obtain certification from the International Organization for Standardization by January 1, 2019.

## Transporting and Cultivating Caregivers

Prior to January 2017, caregivers who cultivated marijuana for their patients could voluntarily register the location of their cultivation with the Executive Director. However, as of January 1, 2017, caregivers who cultivate medical marijuana and those who transport medical marijuana to homebound patients must register as such with the Executive Director. However, as a matter of practice, these caregivers register with CDPHE via the medical marijuana registry.

CDPHE has historically maintained a voluntary caregiver registry. The current online registration system for caregivers was designed so that a caregiver can register in one place and CDPHE and MED view only certain fields within that registry, based on their respective roles. For example, MED does not access the caregiver's demographic information and CDPHE does not access the cultivation location or plant count information.

Caregivers cultivating more than 36 plants must register:<sup>249</sup>

- The location of each cultivation,
- The medical marijuana registry registration identification number of each patient for whom they cultivate medical marijuana, and
- Any extended plant count numbers (patients with physician recommendations exceeding six plants) and their corresponding patient registry numbers.

Transporting caregivers must register:<sup>250</sup>

- The registration number of each homebound patient for whom they transport medical marijuana;
- The total number of plants and ounces that the caregiver is authorized to transport; and
- The location, if applicable, of each patient's registered medical marijuana center or caregiver cultivation.

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<sup>249</sup> Colorado Department of Revenue. *MED Caregiver Cultivation Registration*. Retrieved July 17, 2018, from [www.colorado.gov/pacific/enforcement/med-caregiver-cultivation-registration](http://www.colorado.gov/pacific/enforcement/med-caregiver-cultivation-registration)

<sup>250</sup> Colorado Department of Revenue. *MED Caregiver Cultivation Registration*. Retrieved July 17, 2018, from [www.colorado.gov/pacific/enforcement/med-caregiver-cultivation-registration](http://www.colorado.gov/pacific/enforcement/med-caregiver-cultivation-registration)

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Table 18, illustrates, for the calendar years indicated, the number of caregiver cultivations registered.

**Table 18**  
**Caregiver Cultivation Registrations**

Calendar Year	Number of Registered Cultivations
2013	74
2014	148
2015	209
2016	256
2017	2,173

The significant increase in registrations in 2017 can, in all probability, be attributed to the requirement that all cultivating caregivers register their cultivations as of January 1, 2017. Prior to such time, the registration of cultivations was voluntary.

Data pertaining to transporting caregivers are not available.

It is worth noting that MED is limited in its legal access to the caregiver registry. Statute restricts the agency to responding to verifying cultivation locations of specific addresses, and even then, only when queried by a local government or law enforcement agency.

### **Collateral Consequences – Criminal Convictions**

Section 24-34-104(6)(b)(IX), C.R.S., requires the Colorado Office of Policy, Research and Regulatory Reform to determine whether the agency under review, through its licensing processes, imposes any disqualifications on applicants or registrants based on past criminal history, and if so, whether the disqualifications serve public safety or commercial or consumer protection interests.

Among other things, the Executive Director is specifically prohibited from issuing any license to:<sup>251</sup>

- A person who has discharged a sentence in the five years immediately preceding the application date for a conviction of a felony; or
- A person who has discharged a sentence for a felony regarding the possession, distribution, manufacturing, cultivation or use of a controlled substance in the 10 years immediately preceding the date of application or five years from May 28, 2013, whichever is longer, except that the Executive Director may grant a license to such a person if the person has a state felony conviction based on possession or use of marijuana or marijuana concentrate that would not be a felony if the person were convicted of the offense on the date of license application.

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<sup>251</sup> § 12-43.3-307(1), C.R.S.

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Although license denials and disciplinary action have likely occurred based on individuals' criminal histories, these data are not tracked and so cannot be reported.

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## Analysis and Recommendations

### Recommendation 1 – Continue the Colorado Retail Marijuana Code for nine years, until 2028.

On November 6, 2012, the voters of Colorado passed Amendment 64 to the state’s constitution, effectively legalizing the use of marijuana by those age 21 and older. Amendment 64 became effective upon proclamation of the Governor on December 10, 2012, with the first retail sale occurring on January 1, 2014.

In short, this constitutional provision provided the general outlines for:

- The regulation of industrial hemp;
- The personal use of marijuana; and
- The regulation of marijuana business establishments, including retail stores, cultivation facilities, marijuana product manufacturing facilities and testing facilities.

These latter provisions were further implemented by the General Assembly through the Colorado Retail Marijuana Code (Retail Code).

The first sunset criterion asks:

Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation[.]<sup>252</sup>

The first two of these questions are highly relevant in this particular sunset review and are addressed in order.

Regardless of marijuana’s status under state law, federal law continues to ban its use. The federal Controlled Substances Act (CSA) classifies marijuana and the cannabinoid tetrahydrocannabinol (THC) in Schedule I.<sup>253</sup> This means that the federal government, particularly the federal Food and Drug Administration, lacks the same regulatory oversight over its production and distribution as it does for drugs in the other CSA schedules.

Further, it is now being grown on a commercial scale in Colorado. These commercial cultivations use various pesticides, herbicides, fungicides and fertilizers to protect their crops and to encourage more profitable growth. Many of these substances can be hazardous themselves.

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<sup>252</sup> § 24-34-104(6)(b), C.R.S.

<sup>253</sup> 21 U.S.C. §§ 812(c)(10) and (17).

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Thus, without the Retail Code, retail marijuana, a Schedule I substance under federal law that is grown using potentially hazardous substances, would be completely unregulated but legal, given its status in the state's constitution.

Therefore, regulation of retail marijuana is necessary to protect the public health, welfare and safety because without the Retail Code, there would be no governmental oversight of any aspect of retail marijuana.

Additionally, conditions that led to the initial enactment of the Retail Code have changed. Since the General Assembly enacted the Retail Code, the U.S. Department of Justice (DOJ) issued a memorandum delineating that department's enforcement priorities.

This memorandum, issued in August 2013 and addressed to all U.S. Attorneys, provided guidance regarding marijuana enforcement. Often referred to as the "Cole Memo," after the Deputy Attorney General who drafted it, it delineated the DOJ's enforcement priorities as preventing:<sup>254</sup>

- The distribution of marijuana to minors;
- Revenue from the sale of marijuana from going to criminal enterprises, gangs and cartels;
- The diversion of marijuana from states where it is legal under state law in some form to other states;
- State-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Violence and the use of firearms in the cultivation and distribution of marijuana;
- Drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Growing of marijuana on public land and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Marijuana possession or use on federal property.

While the Cole Memo's guidance reinforced the DOJ's position that U.S. Attorneys and federal law enforcement should continue to focus on the enumerated priorities, it also clarified the DOJ's 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.<sup>255</sup>

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<sup>254</sup> U.S. Department of Justice. *Memorandum for All United States Attorneys, from James M. Cole, Deputy Attorney General, Regarding Guidance Regarding Marijuana Enforcement*, August 29, 2013, pp. 1-2. Retrieved May 9, 2018, from [www.justice.gov/iso/opa/resources/3052013829132756857467.pdf](http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf)

<sup>255</sup> U.S. Department of Justice. *Memorandum for All United States Attorneys, from James M. Cole, Deputy Attorney General, Regarding Guidance Regarding Marijuana Enforcement*, August 29, 2013, p. 2. Retrieved May 9, 2018, from [www.justice.gov/iso/opa/resources/3052013829132756857467.pdf](http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf)

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In such circumstances,

enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity.<sup>256</sup>

Taken together, these provisions were generally interpreted as meaning that so long as state law created a robust regulatory environment that was strongly enforced, the federal government would not interfere except in those individual cases where the DOJ's enforcement priorities were at risk.

While the Cole Memo was rescinded on January 4, 2018, many still look to it as providing the best guidance from the federal government in terms of DOJ's expectation of the states relating to marijuana. The Retail Code represents Colorado's efforts to address these enforcement priorities.

Finally, the state's constitution envisions state and local licensing of retail marijuana business establishments. It even goes so far as to identify the types of businesses that should be licensed and the license application process. For example, the constitution requires the state licensing authority, which the Retail Code defines as the Executive Director of the Colorado Department of Revenue (Executive Director), to accept applications and application fees on behalf of local jurisdictions. Additionally, the constitution establishes the application fee for both state and local licensing authorities.

The constitution, however, provides only a general framework for regulating the retail marijuana industry. Reliance on these provisions alone to address the DOJ's enforcement priorities is inherently risky.

Discussion of the constitutional provisions governing retail marijuana raises another, and final, argument in favor of continuing the Retail Code. The constitution affirmatively requires the state to adopt regulations to govern the retail marijuana industry.<sup>257</sup> If the Retail Code were to sunset, the General Assembly would be legally compelled to replace it with something else. Given the prescriptive nature of the constitution, that "something else" would very likely be remarkably similar to the Retail Code itself.

For all of these reasons, the General Assembly should continue the Retail Code for nine years, until 2028. Nine years is appropriate given the fact that this is the second sunset review of the Retail Code in four years. As the General Assembly continues to pass multiple marijuana-related bills each session, the Executive Director is forced to engage in a never ending cycle of rulemaking. A nine-year continuation period may create an atmosphere of stability for the industry and its regulators.

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<sup>256</sup> U.S. Department of Justice. *Memorandum for All United States Attorneys, from James M. Cole, Deputy Attorney General, Regarding Guidance Regarding Marijuana Enforcement*, August 29, 2013, p. 3. Retrieved May 9, 2018, from [www.justice.gov/iso/opa/resources/3052013829132756857467.pdf](http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf)

<sup>257</sup> Colo. Const. Art. XVIII, § 16(5)(a).



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## Recommendation 2 – Continue the Colorado Medical Marijuana Code for nine years, until 2028.

On November 7, 2000, the voters of Colorado passed Amendment 20 to the state’s constitution, effectively decriminalizing the medical use of marijuana. Amendment 20 became effective on December 28, 2000.

In short, this constitutional provision:

- Creates an affirmative defense for any patient, and the patient’s primary caregiver, whose physician has diagnosed the patient as having a debilitating medical condition, and whose physician has advised the patient that the patient might benefit from the use of medical marijuana;<sup>258</sup>
- Provides for the creation of a medical marijuana registry, including requirements for inclusion on the medical marijuana patient registry and the issuance of registry identification cards;<sup>259</sup>
- Generally limits possession of medical marijuana to no more than two ounces of marijuana in a useable form and no more than six plants;<sup>260</sup> and
- Generally applies only to patients who are at least 18 years old.<sup>261</sup>

In the years that followed, local governments began licensing medical marijuana dispensaries.

This era was characterized by what some refer to as “the backpack brigades.” Dispensaries could sell medical marijuana; primary caregivers could grow medical marijuana; and patients could grow, possess and use medical marijuana. The dispensaries, however, had no way to legally obtain the medical marijuana they sold. As a result, each morning, individuals would appear at the dispensaries offering to sell them medical marijuana out of backpacks.

In short, there was little to no regulation, a considerable amount of illegally grown medical marijuana, and a tremendous amount of cash trading hands.

On October 19, 2009, the United States Department of Justice issued what has come to be known as the “Ogden Memo,” which, while recognizing the plenary authority of the various United States Attorneys, directed they,

should not focus federal resources in [their] states on individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana.<sup>262</sup>

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<sup>258</sup> Colo. Const. Art. XVIII, § 14(2)(a).

<sup>259</sup> Colo. Const. Art. XVIII, § 14(3).

<sup>260</sup> Colo. Const. Art. XVIII, § 14(4).

<sup>261</sup> Colo. Const. Art. XVIII, § 14(6).

<sup>262</sup> U.S. Department of Justice. *Memorandum for Selected United States Attorneys, from David W. Ogden, Deputy Attorney General, regarding Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana*, October 19, 2009. Retrieved July 24, 2018, from [www.justice.gov/archives/opa/blog/memorandum-selected-united-state-attorneys-investigations-and-prosecutions-states](http://www.justice.gov/archives/opa/blog/memorandum-selected-united-state-attorneys-investigations-and-prosecutions-states)

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Thus, the General Assembly enacted the Colorado Medical Marijuana Code (Medical Code) in 2010. Among other things, the Medical Code creates the framework for the licensing of medical marijuana centers, their cultivation facilities, medical marijuana-infused products (MMIPs) manufacturers and the individuals who work in such facilities. The legislation named the Executive Director as the state licensing authority to administer the Medical Code.

The first sunset criterion asks:

Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;<sup>263</sup>

All three of these questions are highly relevant to the sunset review of the Medical Code and are addressed in order.

The points made in Recommendation 1 regarding marijuana's status under the CSA and the DOJ's enforcement priorities are just as applicable to the Medical Code as to the Retail Code and will not be repeated here, but should be considered as germane.

The passage of Amendment 64 and the Retail Code represent conditions that have arisen that warrant if not more, at least the same degree of regulation of medical marijuana. If the Medical Code were to sunset, medical marijuana would remain legal, given its constitutional status, but would be unregulated and it would exist alongside the highly regulated retail marijuana industry. This would create a situation in which a product is regulated when used recreationally but is unregulated when used medically.

For all of these reasons, the General Assembly should continue the Medical Code for nine years, until 2028. Nine years is appropriate given the fact that this is the second sunset review of the Medical Code in five years. As the General Assembly continues to pass multiple marijuana-related bills each session, the Executive Director is forced to engage in a never ending cycle of rulemaking. A nine-year continuation period may create an atmosphere of stability for the industry and its regulators.

**Recommendation 3 – Effective January 1, 2020, integrate the Medical Code into the Retail Code to create a single code, and retain certain necessary differences.**

The third sunset criterion asks whether the operations of the agency under review are impeded or enhanced by existing statutes, rules or procedures.<sup>264</sup> The manner in which Colorado regulates marijuana is indicative of the way in which marijuana was legalized in the state, and the timelines involved in that legalization.

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<sup>263</sup> § 24-34-104(6)(b), C.R.S.

<sup>264</sup> § 24-34-104(6)(b)(III), C.R.S.

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Amendment 20, passed in 2000 legalized medical marijuana. The Medical Code, enacted in 2010, regulates the commercial medical marijuana industry that evolved from the passage of Amendment 20.

Amendment 64, passed in 2012 and effective in 2014, legalized retail marijuana. The Retail Code, enacted in 2013 and effective in 2014, created and regulated the commercial retail marijuana industry.

Thus, two constitutional amendments begat two codes, which in turn begat two sets of rules. To complicate matters even further, the codes continue to be amended each legislative session (and not always in the same manner), resulting in the need to amend the rules promulgated under them.

This situation, at least in part, may lead some to assert that Colorado's marijuana industry is over regulated, or at best, on the verge of overregulation.

The result is two constitutional provisions that are substantially different but are implemented by two codes and two sets of rules that are remarkably similar, yet annoyingly dissimilar, all of which regulate a single substance—marijuana. This creates unnecessary duplication for the regulator and regulated communities alike, and creates confusion. Confusion can lead to noncompliance, which is no one's best interests.

While some are content with the status quo, some type of streamlining seems entirely appropriate since the regulation of marijuana is clearly impeded by the current statutory scheme. The form of that streamlining, however, is the subject of much debate.

Some advocate for complete alignment, which would abandon the distinction between medical and retail marijuana and licenses and simply regulate marijuana. Under most of these scenarios, the only distinction that would be made would occur at the point of sale, where the two types of marijuana would be taxed differently depending on whether the purchaser was a medical marijuana patient (as evidenced by possession of a medical marijuana registry identification card) or not. Patients would simply pay less tax.

Problems with this type of scheme quickly become apparent, however. Under this proposal, marijuana would continue to be tracked in the Department of Revenue, Marijuana Enforcement Division's (MED's) seed-to-sale inventory tracking system, but it would no longer be segregated into medical or retail marijuana. However, today, both the state and many local jurisdictions impose an excise tax on the first transfer of retail marijuana, which typically occurs when finished product is transferred out of the cultivation. Thus, how would the excise tax be calculated?

Additionally, some local jurisdictions have opted to permit medical marijuana, but not retail and vice versa, while others have opted to permit both. How would a single type of marijuana impact those communities?

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Medical marijuana can be purchased by those 18 and older, but retail marijuana can only be purchased by those 21 and older. How should these disparities be addressed?

There are no potency limitations on medical marijuana, yet there are for retail marijuana. How should this discrepancy be addressed? Should patients be put in the situation of having to consume more, weaker marijuana to meet their medical needs? Should recreational users have access to medical strength product?

While none of these dilemmas are insurmountable, resolving them will require finesse, patience and collaboration. The solutions should be part of a larger discussion, a discussion that takes place outside of a time-limited sunset review.

Another option is to enact what amounts to three codes: common provisions, medical provisions and retail provisions. Under this scenario, the provisions that are common to both codes today would be stripped out and placed in a code unto themselves, while the Retail Code and Medical Code would continue to contain any desired differences. At first blush, this approach seems reasonable. However, rather than having two codes to consider, there would be three. Thus, this effort at streamlining could potentially make the situation even more complicated than it is today.

A final option, and the one recommended here, is to fully integrate the two codes into a single code, yet retain the important distinctions between them. Importantly, the distinction between medical and retail marijuana should continue, along with their parallel licensing schemes. However, wherever practicable, processes, requirements and terminology should be harmonized along the lines of those provided in today's Retail Code.

For example, the concepts of "retail cultivation facility" under the Retail Code and "optional premises cultivation" under the Medical Code should be reconciled into "retail cultivation facility" and "medical cultivation facility" and the licensing requirements and processes for each should be the same.

Areas where the distinctions should be maintained include:

- Any provisions relating to medical marijuana patients, including, but not limited to matters such as providing medical marijuana registry identification cards or proof of submission of an application for same, possession limitations and caregivers;
- The authority of medical marijuana centers to sell non-marijuana consumable products should be retained;
- Any area where this sunset report makes a recommendation impacting either medical or retail marijuana only;
- The labels on medical marijuana should continue to include the patient's medical marijuana registry identification number;
- The potency standards under the two codes should remain different;
- Possession limitations under the two codes should remain different;
- Patients with extended plant counts for medical marijuana should continue to be able to have those extended plant counts;

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- Medical and retail marijuana should continue to be taxed differently;
  - All occupational licenses should be valid for two years; and
  - The differing age limitations on purchasing the two types of marijuana should be retained.

Notwithstanding the discussion thus far, one area where the codes should be harmonized in favor of the Medical Code pertains to the authority of local jurisdictions. For example, the Medical Code specifically addresses the following issues, while the Retail Code remains silent:

- The ability of a local licensing authority to suspend or revoke a license,<sup>265</sup>
- The process by which a local licensing authority can dispose of unauthorized marijuana,<sup>266</sup>
- The ability of a local licensing authority to revoke or not renew a license for inactivity,<sup>267</sup>
- The manner in which transfers in ownership are processed,<sup>268</sup> and
- The manner and extent to which decisions made by a local licensing authority are subject to judicial review.<sup>269</sup>

Similarly, the Medical Code is a bit more prescriptive than the Retail Code in terms of licensing marijuana establishments.<sup>270</sup> Regardless, as a practical matter, at least some local licensing authorities administer their programs as if the Retail Code matched the Medical Code. As a result, this recommendation does not seek to disrupt the status quo in this regard, but rather to formalize it.

Additionally, the responsible vendor training program and designation created under the Medical Code should be retained, as should the research and development license type.

There are likely other areas where the codes should remain distinct or where the Retail Code should, perhaps, be harmonized with the Medical Code. The examples contained in this Recommendation 3 and others in this sunset report are intended to begin what is sure to be a long and laborious conversation, but one that it is time to undertake.

The advantages of harmonizing the codes are plenty, including a possible reduction in paperwork; a streamlining of the licensing and other regulatory processes and a reduction in the number of statutes and regulations to enforce and comply with.

For all these reasons, the General Assembly should, except as described in this Recommendation 3, harmonize the Medical Code to the Retail Code such that there is one Colorado Marijuana Code.

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<sup>265</sup> See §§ 12-43.3-601 and 12-43.4-601, C.R.S.

<sup>266</sup> See §§ 12-43.3-602(4) and 12-43.4-602(4), C.R.S.

<sup>267</sup> See §§ 12-43.3-312 and 12-43.4-311, C.R.S.

<sup>268</sup> See §§ 12-43.3-309 and 12-43.4-308, C.R.S.

<sup>269</sup> See §§ 12-43.3-801 and 12-43.4-801, C.R.S.

<sup>270</sup> See §§ 12-43.3-310(7) and 12-43.4-309(6), C.R.S.

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To provide sufficient time for rules, policies and other processes to be worked out, integration should be delayed until January 1, 2020.

**Recommendation 4 – Require industrial hemp that is used in the manufacture of medical or retail marijuana products or that is sold in a medical marijuana center or a retail marijuana store to enter the regulated system and be tested.**

Amendment 64 legalized not only retail marijuana but also industrial hemp, and defined it as cannabis containing less than 0.3 percent THC concentration.<sup>271</sup> The Amendment specifically excludes industrial hemp from its definition of marijuana<sup>272</sup> and the Retail Code’s definition of retail marijuana specifies that retail marijuana is cultivated, manufactured, distributed or sold by a licensed retail marijuana establishment.<sup>273</sup> Thus, industrial hemp is not retail marijuana.

Although Amendment 20’s definition of marijuana is less prescriptive than Amendment 64’s,<sup>274</sup> the Medical Code’s definition of medical marijuana is similar to that of the Retail Code in that it stipulates that medical marijuana is marijuana that is grown and sold pursuant to the Medical Code.<sup>275</sup> Thus, industrial hemp is not medical marijuana.

As such, industrial hemp lies outside the scope of the sunset reviews of the codes.

However, a considerable amount of industrial hemp has relatively high concentrations of cannabidiol (CBD), which is in high demand among medical marijuana patients in particular. It is not surprising, then, that industrial hemp-derived CBD has made its way into medical and retail marijuana products, not as marijuana but as a non-marijuana ingredient. As such, it is not subject to the same testing protocols as are retail and medical marijuana.

Thus, a situation has developed in which cannabis grown in one context is highly regulated and tested, but cannabis grown in another context is subject to relatively little regulation and is not tested, yet cannabis from both is used in manufacturing marijuana products. This lack of testing is particularly problematic for medical marijuana patients, who may have compromised immune systems. Because industrial hemp is not subject to the same standards as medical or retail marijuana, it may contain all of the pesticides and other contaminants that the state’s marijuana testing regime is designed to detect.

One solution to this problem is to simply prohibit the use of industrial hemp-derived CBD from all marijuana products. However, this seems unjustified and overly restrictive. Industrial hemp simply needs to be tested to ensure that it, like its marijuana cousin, is safe.

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<sup>271</sup> Colo. Const. Art. XVIII, § 16(2)(d).

<sup>272</sup> Colo. Const. Art. XVIII, § 16(2)(f).

<sup>273</sup> § 12-43.4-103(15), C.R.S.

<sup>274</sup> Colo. Const. Art. XVIII, § 14(1)(i).

<sup>275</sup> § 12-43.3-104(7), C.R.S.

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Therefore, the General Assembly should require that any industrial hemp-derived product that is used in either medical or retail marijuana products or that is sold in a medical marijuana center or a retail marijuana store enter the regulated system at the point of testing, and require that such industrial hemp adhere to the same testing protocols and standards as marijuana grown under the Medical and Retail Codes.

**Recommendation 5 – Allow retail marijuana stores to sell to consumers, industrial hemp-containing non-marijuana consumables.**

Recommendation 4 of this sunset report advocates for the ability of industrial hemp-derived products to enter the regulated market. This would allow such products to be sold in retail marijuana stores and medical marijuana centers.

However, while the Retail Code allows retail marijuana stores to sell non-consumable products, such as apparel and marijuana-related products, such licensees are:

Prohibited from selling or giving away any consumable product, including but not limited to cigarettes or alcohol, or edible product that does not contain marijuana, including but not limited to sodas, candies, or baked goods.<sup>276</sup>

The Medical Code contains no such prohibition.

The second sunset criterion asks whether existing statutes represent the least restrictive form of regulation consistent with the public interest.<sup>277</sup> While there may be valid public policy reasons to prohibit retail marijuana stores—the patrons of which are seeking marijuana for recreational as opposed to medical purposes—from selling cigarettes and alcohol, and possibly even other non-marijuana consumable products, hemp-derived products are similar enough to marijuana products that the prohibition should be lifted with respect to these products.

For these reasons, the General Assembly should allow retail marijuana stores to sell to consumers industrial-hemp derived non-marijuana consumable products.

**Recommendation 6 – Direct the Executive Director to establish, by rule and no later than July 1, 2020, equivalency standards for medical marijuana products and concentrates.**

Both Amendment 20 and Amendment 64, as well as their corresponding codes, provide limitations on the amount of marijuana an individual may possess.

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<sup>276</sup> § 12-43.4-402(7)(a), C.R.S.

<sup>277</sup> § 24-34-104(6)(b)(II), C.R.S.



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Amendment 20 permits, in general, patients to possess no more than two ounces of a usable form of marijuana and no more than six plants.<sup>278</sup>

Amendment 64 permits, in general, individuals to possess no more than one ounce of marijuana and no more than six plants.<sup>279</sup>

These limitations have generally been recognized as applying to marijuana flower, or bud. However, given the increase in popularity of concentrates and marijuana products (i.e., edibles, lotions, oils, tinctures, suppositories, patches and the like), it has become difficult for licensees to ascertain how much product their customers can purchase (and thus possess) and for law enforcement to ascertain how much marijuana an individual actually possesses when that marijuana is in a form other than flower or a plant.

For these reasons, the Retail Code directs the Executive Director to establish so called “equivalency standards” whereby it is possible to determine that eight grams of concentrate, or 80 10-milligram servings of THC in an edible product, is equivalent to one ounce of marijuana flower. While many are critical of the standards adopted by the Executive Director, few argue their necessity.

However, the Medical Code contains no similar directive. As a result, there are no equivalency standards for medical marijuana. While most agree that such standards are necessary, few agree on what those standards should be.

Special attention must be paid to the fact that medical marijuana is used by patients. As a result, the equivalency standards in place for retail marijuana are likely inappropriate for medical marijuana, and the Executive Director should take this into consideration when promulgating the rules establishing the standard.

For all these reasons, the General Assembly should direct the Executive Director to establish equivalency standards for medical marijuana, and those standards should take into consideration the special needs of medical marijuana patients. Because the process to determine the proper standards merits considerable discussion and is likely to be protracted, the directive should require the standards to be established no later than July 1, 2020.

**Recommendation 7 – Expand the applicability of the Colorado Food and Drug Act to medical marijuana, as it already applies to retail marijuana.**

The provisions of the Colorado Food and Drug Act (CFDA) regarding the sale of food include the manufacture, production, processing, packaging, exposure, offer, possession and holding of any food article for sale.<sup>280</sup>

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<sup>278</sup> Colo. Const. Art. XVIII, § 14(4)(a).

<sup>279</sup> Colo. Const. Art. XVIII, § 16(3).

<sup>280</sup> § 25-5-402(25), C.R.S.



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In establishing the CFDA, the General Assembly found that registering wholesale food manufacturers and regulating the places where manufactured foods are produced, manufactured, packed, processed, prepared, treated, packaged, transported or held for distribution is necessary to protect the public health and will benefit consumers by ensuring that such food comes from safe sources and is unadulterated.<sup>281</sup> Regulation includes a registration and facility inspection program administered by the Colorado Department of Public Health and Environment (CDPHE).

The CFDA is a statute of general applicability, and is not confined to any single type of wholesale food manufacturers. However, manufacturers of medical marijuana-infused products, but not retail marijuana products, are specifically exempted from it.<sup>282</sup> Arguably, then, retail products are manufactured in safer facilities than are medical products.

As a practical matter, however, many marijuana product manufacturers are licensed to produce both medical and retail products. Regardless, this creates a situation in which a marijuana product manufacturer is subject to the CFDA when producing retail products, but not when producing medical products.

Additionally, placing marijuana products manufacturers clearly within the jurisdiction of the CFDA and CDPHE, empowers the agency with wholesale food manufacturing expertise to assume responsibility and allows the Executive Director to refocus resources on other areas.

As the marijuana industry matures, it becomes more reasonable to regulate it like any other industry in those areas where non-marijuana corollaries exist, such as under the CFDA.

Thus, to ensure that medical marijuana products are produced under conditions identical to those of retail marijuana products, the General Assembly should repeal the exemption for medical marijuana from the CFDA.

**Recommendation 8 – Streamline the license renewal processes and recognize that licenses issued by local licensing authorities may have different expiration dates.**

Most agree that the license renewal process under both codes is overly complex, redundant and unresponsive to business and local licensing authority needs.

Both codes go to great lengths to articulate the renewal process by stipulating when renewal notices must be provided, providing for grace periods and even articulating the order in which state and local renewal applications should be processed seemingly without regard for the likelihood that state and local licenses expire on different dates.

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<sup>281</sup> § 25-5-426(1), C.R.S.

<sup>282</sup> §§ 12-43.3-104(9) and 25-4-403(3), C.R.S.

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To simplify and streamline the renewal process, the General Assembly should make the following changes to sections 12-43.3-311(1) and 12-43.4-310(1), Colorado Revised Statutes (C.R.S.):

- Require submission of any renewal application to a local licensing authority to be submitted within the timeframe required by local ordinance or regulation, and repeal any statutorily mandated timeframes.
- Allow a licensee that has submitted a timely renewal application to the state or to a local licensing authority to continue to operate until the renewal application is acted upon, and repeal any language pertaining to grace periods, extensions or administrative continuations.
- Repeal any statutory provisions relating to the order in which state and local renewal applications are to be processed.

**Recommendation 9 – Consolidate the research and development license and the research and development cultivation license types into a single license type and authorize discipline other than license revocation.**

House Bill 17-1367 (HB 1367) created two new license types under the Medical Code: research and development license (R&D license) and research and development cultivation license (R&D cultivation license). An R&D licensee may possess marijuana in order to:<sup>283</sup>

- Test the chemical potency and composition levels of the marijuana;
- Conduct clinical investigations of marijuana-derived medicinal products;
- Conduct research on the efficacy and safety of administering marijuana as part of medical treatment;
- Conduct genomic, horticultural or agricultural research; and
- Conduct research on marijuana-affiliated products or systems.

An R&D cultivation licensee may grow, cultivate, possess and transfer marijuana for the same research purposes.<sup>284</sup>

There is no apparent public policy reason to have two distinct research and development licenses when they could easily be combined into a single license type that encompasses all such activities.

Finally, the Executive Director is authorized to promulgate rules pertaining to the revocation of an R&D license and a R&D cultivation license, but not other forms of discipline.<sup>285</sup> When only revocation is an option, which entails shuttering a business and terminating employees, a regulator may take no disciplinary action at all. Thus, other forms of discipline, such as fines, suspensions or placing a licensee on probation, are useful tools. The Executive Director lacks these additional, less harsh tools.

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<sup>283</sup> §§ 12-43.3-409(1)(a) and -409(2), C.R.S.

<sup>284</sup> § 12-43.3-409(1)(b), C.R.S.

<sup>285</sup> § 12-43.3-409(4), C.R.S.

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Therefore, the General Assembly should collapse these two license types into a single research and development license type that is authorized to do everything that the two separate license types can do today, and authorize the Executive Director to take disciplinary action other than license revocation.

**Recommendation 10 – Repeal the ability of medical research facilities and pesticide manufacturers to obtain medical marijuana without being licensed.**

In addition to creating two research and development license types, HB 1367 also enabled medical research facilities and pesticide manufacturers to obtain medical marijuana and then take that marijuana out of the regulated system, meaning that once such an entity obtains the medical marijuana, it is no longer tracked.<sup>286</sup>

On the one hand, this makes some sense since these entities are, more or less, the end users. When medical marijuana is sold to a patient, it is no longer tracked either.

However, HB 1367 created two distinct license types for the sole purpose of conducting research and development on medical marijuana. It seems inconsistent to require such a license for some research and no license for other research.

Since medical research is already among the list of allowable research and development projects for the R&D license, the General Assembly should repeal the ability of a medical research facility to possess marijuana outside of the regulated system.

Similarly, horticultural and agricultural research is also among the allowable research and development projects for the R&D license, so the General Assembly should repeal the ability of a pesticide manufacturer to possess marijuana outside of the regulated system.

**Recommendation 11 – Authorize the Executive Director to seek injunctive relief from the district court.**

The third sunset criterion asks whether existing statutes impede the agency's operations.<sup>287</sup> Few would argue the extent to which the codes grant to the Executive Director jurisdiction over licensees. Surprisingly, the Executive Director lacks direct authority to compel a licensee to comply with an order. The Executive Director can, of course, revoke or suspend a license for failure to comply with an order, but short of such drastic measures, there are no options. The Executive Director cannot even issue an order to cease and desist from behavior that violates the codes.

Not surprising, then, the Executive Director has no authority over those who hold no license. It is not unusual for individuals to complain to the MED about unlicensed operations and for the MED to refer the complainants to local law enforcement.

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<sup>286</sup> § 12-43.3-202(1)(h), C.R.S.

<sup>287</sup> § 24-34-104(6)(b)(III), C.R.S.

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However, if the Executive Director had the authority to seek injunctive relief from the district court, both situations could be remedied. With such authority, the Executive Director could petition the court to order a licensee to comply or to order an unlicensed operation to cease operations.

Such authority is not without precedent when it comes to regulatory programs. For example, the Colorado Medical Board,<sup>288</sup> the Colorado Real Estate Commission<sup>289</sup> and the Colorado Limited Gaming Control Commission<sup>290</sup> all have such authority.

Therefore, the General Assembly should grant to the Executive Director the authority to seek injunctive relief from the district court.

**Recommendation 12 – Authorize the Executive Director to seek investigative subpoenas from the district court in those instances when the Executive Director can demonstrate a need for the sought-after documents or information and that reasonable efforts were made to obtain them without a subpoena.**

The third sunset criterion asks whether existing statutes impede the agency’s operations.<sup>291</sup> Few would argue the extent to which the codes grant to the Executive Director jurisdiction over licensees. Surprisingly, the Executive Director lacks direct authority to compel a licensee, applicant or third party to provide information.

As part of the licensing and investigative processes, MED staff frequently needs to obtain documents and information from applicants, licensees and, occasionally, third parties. Such documents may include, but are not limited to bank statements or financing documents. As part of this process, applicants and licensees sign an “Authorization to Release Information.”

While applicants and licensees are likely to cooperate and provide the requested information, there are times when MED staff has concerns regarding misrepresentations or adulterated documents. On rare occasions, the applicant or licensee may refuse to provide the requested documents. Under such circumstances, there is value in obtaining the documents directly from a third party.

However, third parties are understandably reluctant to provide such sensitive documents without a subpoena. This can be true even when the applicant or licensee has signed a consent to release the information.

For example, as part of a 2017 investigation into whether a license applicant was a Colorado resident, MED had obtained credit card receipts that gave staff reason to

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<sup>288</sup> § 12-36-129(6)(c), C.R.S.

<sup>289</sup> § 12-61-122, C.R.S.

<sup>290</sup> § 44-30-302(1)(m), C.R.S.

<sup>291</sup> § 24-34-104(6)(b)(III), C.R.S.

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believe that the applicant was staying at a hotel, rather than residing at the Denver address provided in the application. Hotel staff refused to cooperate with MED staff, even with a signed Authorization to Release Information.

This refusal to provide documents can hinder the administrative process and creates the risk that someone who, perhaps, should not be licensed is granted a license or is allowed to continue to operate. Similarly, it can delay the issuance of a license or the closing of an investigation.

To remedy this, the General Assembly should authorize the Executive Director to petition the district court for an investigative subpoena, but only in those situations where the Executive Director can demonstrate the need for the documents or information and where the Executive Director can show that reasonable efforts were made to obtain the requested documents or information without a subpoena.

**Recommendation 13 – Reevaluate which records in the possession of the Executive Director should be confidential and which should be open to public inspection.**

A common theme throughout the sunset reviews of the codes pertained to a general lack of transparency. While many of these allegations were leveled at the Executive Director and MED as the regulators, many were also leveled at the industry itself. Much of the justification for this opaqueness can be found in the codes themselves.

As a result of recommendations in the 2014 and 2015 sunset reports of the Medical Code and the Retail Code, the General Assembly enacted broad protections from public disclosure of many records and much of the data held by the Executive Director. Both codes were amended in a similar fashion:

The [Executive Director] has the authority to: [ ] Maintain the confidentiality of reports or other information obtained from a [licensee] containing any individualized data, information, or records related to the licensee or its operation, including sales information, financial records, tax returns, credit reports, cultivation information, testing results, and security information and plans . . .<sup>292</sup>

First, these provisions protect the data and information relating to licensees only. They do nothing to protect similar information submitted by applicants—those who have not yet been granted a license or who may never be granted a license. This should be remedied to apply to both applicants and actual licensees.

Next, while this provision is broad on its face, it has been interpreted even more broadly such that aggregated de-identified data relating to the state’s marijuana workforce are deemed to be confidential, as is aggregated de-identified testing results (including the results of laboratory proficiency testing) of marijuana, documents and orders relating to

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<sup>292</sup> §§ 12-43.3-202(1)(d) and 12-43.4-202(2)(d), C.R.S.

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disciplinary actions and even certain checklists are considered to be confidential and not subject to public disclosure.

To be sure, the regulator's records and files pertaining to investigations of individual licensees should remain confidential, but documents relating to final agency actions and orders should be a matter of public record.

Similarly, documents pertaining to applications and supplemental records, such as leases, business organization records, tax returns and credit reports, security documents and plans should remain confidential. These often contain personal information regarding individual owners and there is little to no public protection value in making them public.

Additionally, documents relating to cultivating, harvesting, transporting and sales of marijuana, as well as security plans and documents should all remain confidential as such information is proprietary and relevant to security.

Information relating to patients and customers should remain confidential.

Information relating to the security and integrity of the investigative process, as well as the computer systems maintained by the Executive Director and the vendors with which the Executive Director has contracted (i.e., the MED's seed-to-sale inventory tracking system) should be confidential. Cybersecurity is an area of increasing concern for everyone and recent Colorado Open Records Act requests pertaining to the MED's seed-to-sale inventory tracking system have raised fears that potential hackers may be seeking information to break into that system.

However, there are some items that should be open to public inspection. These include aggregated and de-identified marijuana test results, aggregated and de-identified demographic data pertaining to applicants and licensees and enforcement forms and compliance checklists.

Both codes specifically protect licensee test results as confidential. While this is understandable from a proprietary perspective—licensees have intellectual property interests in their various strains and products—there is also a dearth of research regarding marijuana. Colorado has pioneered the testing of marijuana and marijuana products, yielding voluminous data pertaining to potency, the use of pesticides, the prevalence of microbials and much more. Yet, the confidentiality provisions in the codes ensure that only the individual licensee and the regulator ever see this data. No data are available to researchers, not even on an aggregated and de-identified basis. For an industry in desperate need of research, particularly for medical marijuana, there is remarkably little data available to the public. Additionally, consumers ought to have access to, at a minimum, industry norms relating to the marijuana products they consume.

In a similar vein, the testing facilities that licensees must utilize to comply with the codes' mandatory testing requirements must themselves participate in periodic proficiency testing. This is a process that measures the uniformity and consistency of test results from one testing facility to another. Again, the results of these proficiency

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tests are not available to the public. They are not even available to the licensees who must in turn hire the testing facilities to test their product for compliance with the codes and the Executive Director's rules.

Therefore, all testing data should be made available for public inspection on an aggregated and de-identified basis.

Similarly, certain information pertaining to licensees themselves is currently public, while some remains confidential. For example, licensee names, license numbers and status and business addresses are public information, but demographic information relating to those same individuals is not. This hinders the ability of researchers and policy makers to analyze who is participating in the marijuana workforce and industry, and ascertaining whether any unintended barriers to entry exist. Demographic data should be publicly available on an aggregated and de-identified basis.

Finally, the Executive Director has developed various enforcement forms and compliance checklists. These should be publicly available to aid in compliance and to inform the regulated community and the public of the Executive Director's enforcement priorities and to ensure consistent enforcement.

Aside from the recommendations to treat documents and data submitted by applicants in the same manner as those submitted by licensees and to protect computer systems from cyberattack, nothing in this recommendation is intended to make confidential anything that is not confidential today. The aim of this recommendation is to bring greater transparency to what many agree is an overly opaque program.

Therefore, the General Assembly should amend the codes to:

- Protect information and records submitted by license applicants in the same manner as that submitted by licensees;
- Make investigative records and documents related to ongoing investigations confidential;
- Make documents relating to final agency actions and orders a matter of public record;
- Make supplemental records, such as leases, business organization records, tax returns and credit reports, confidential;
- Make records, data and information pertaining to cultivating, harvesting, transporting and sales of marijuana, as well as security documents and plans, confidential;
- Make records pertaining to patients and customers confidential;
- Make information pertaining to computer systems confidential;
- Make records pertaining to testing available for public inspection on an aggregated and de-identified basis;
- Make demographic information pertaining to applicants and licensees available on an aggregated and de-identified basis; and
- Make enforcement forms and compliance checklists available to the public.



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**Recommendation 14 – Amend the “Unlawful Acts” sections of the codes to harmonize them, add to the list of unlawful acts certain acts and re-characterize several provisions as administrative violations rather than unlawful acts.**

In the event that Recommendation 3 of this sunset report is not adopted, the General Assembly should nevertheless harmonize the unlawful acts sections of the codes to be consistent. It makes no sense that a certain action should be unlawful and subject to criminal prosecution in the context of medical marijuana, but not retail marijuana, and vice versa. Even if Recommendation 3 is adopted, the unlawful acts provisions of the codes should be harmonized in the manner outlined in this Recommendation 14.

To be consistent with the Retail Code, the General Assembly should add the following unlawful act to the Medical Code at section 12-43.3-901(2), C.R.S.:

Have an unreported financial or a direct interest in a license pursuant to this article; except that this paragraph does not apply to banks or savings and loan associations supervised and regulated by an agency of the state or federal government, or to FHA-approved mortgagees, or to stockholders, directors, or officers thereof.<sup>293</sup>

To be consistent with the Medical Code, the General Assembly should add the following unlawful acts to the Retail Code at section 12-43.4-901(4), C.R.S.:

- To offer for sale or solicit an order for retail marijuana or retail marijuana products in person except within the licensed premises.<sup>294</sup>
- To buy retail marijuana or retail marijuana products from a person not licensed to sell as provided by the Retail Code.<sup>295</sup>
- To sell retail marijuana or retail marijuana products except in the permanent location specifically designated in the license for sale.<sup>296</sup>
- To burn or otherwise destroy marijuana or any substance containing marijuana for the purpose of evading an investigation or preventing seizure.<sup>297</sup>

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<sup>293</sup> An identical provision can be found in the Retail Code at § 12-43.4-901(2)(b), C.R.S.

<sup>294</sup> An identical provision can be found in the Medical Code at § 12-43.3-901(4)(f), C.R.S.

<sup>295</sup> An identical provision can be found in the Medical Code at § 12-43.3-901(4)(h), C.R.S.

<sup>296</sup> An identical provision can be found in the Medical Code at § 12-43.3-901(4)(i), C.R.S.

<sup>297</sup> An identical provision can be found in the Medical Code at § 12-43.3-901(4)(n), C.R.S.



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To be consistent with the Retail Code, and to incorporate protections afforded by Amendment 20, the General Assembly should amend the Medical Code at section 12-43.3-901(2), C.R.S., to add a reference to Amendment 20, which will make it unlawful for a person to

Buy, sell, transfer, give away, or acquire retail marijuana or retail marijuana products except as allowed pursuant to [the Medical Code] or section 14 of article XVIII of the state constitution;

Some of the unlawful acts enumerated in the codes are overly restrictive in the sense that they are unlawful acts, which carry criminal sanctions, rather than administrative violations. To more appropriately balance the nature of the violation with the attendant repercussions, the General Assembly should repeal the following unlawful acts from sections 12-43.3-901(3) and 12-43.4-901(3), C.R.S., and clarify that they are administrative violations:

(a) To be within a limited access area unless the person’s license badge is displayed as required by this article, except as provided in section [12-43.3-701 and 12-43.4-701];

(b) To fail to designate areas of ingress and egress for limited access areas and post signs in conspicuous locations as required by this article;

(d) To fail to report the name of or a change in managers as required by section [12-43.3-310(12) and 12-43.4-309(11)];

Both codes make it unlawful, and thus a state-level crime to “display any signs that are inconsistent with local laws or regulations.”<sup>298</sup> These provisions should be repealed since it is more appropriate for local jurisdictions to enforce such laws.

Both codes make it unlawful, and thus a crime, to commit acts that are unlawful pursuant to either code “or the rules authorized and adopted pursuant to” them.<sup>299</sup> These should be repealed, in part, since violating an agency rule should not constitute a criminal act.

Finally, the codes go to great length to ensure owners of licensees are thoroughly vetted and suitable for licensure. However, the unlawful acts sections of the codes are silent on operating without a license or transferring ownership in a licensee without prior approval. Therefore, the codes should be amended at sections 12-43.3-901(2) and 12-43.4-901(2), C.R.S., to make it unlawful for any person to:

- Exercise any privilege of a license issued under either code that the person does not hold.

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<sup>298</sup> §§ 12-43.3-901(4)(a) and 12-43.4-901(4)(a), C.R.S.

<sup>299</sup> §§ 12-43.3.-901(7) and 12-43.4-901(6), C.R.S.

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- Exercise any privilege associated with holding a financial interest in a license without prior approval from the Executive Director.
  - Engage in a transfer of ownership without prior approval as required by the codes, including but not limited to:
    - An applicant or proposed transferee operating a marijuana business before a transfer of ownership request for that business is approved in writing by the Executive Director; or
    - A current direct beneficial interest owner or proposed transferor failing to retain full responsibility for a marijuana business identified in the transfer of ownership application until the transfer request is approved in writing by the Executive Director.

To maintain the integrity of the marijuana testing system, the General Assembly should amend sections 12-43.3-901(3) and 12-43.4-901(3), C.R.S., to make it unlawful for any licensee to knowingly adulterate or alter, or to attempt to adulterate or alter, any samples of marijuana or marijuana products for the purpose of circumventing contaminant testing detection limits or potency testing requirements.

**Recommendation 15 – Amend the licensing suitability requirements regarding criminal convictions to prohibit the issuance of a license for three years from the date of conviction, but permit the Executive Director to consider an applicant’s criminal character or entire criminal record to the extent it poses a threat to the regulation or control of marijuana.**

The second sunset criterion asks whether existing statute establishes the least restrictive regulation consistent with the public interest.<sup>300</sup>

Both codes prohibit individuals with certain types of criminal histories from obtaining a license. Both codes prohibit the issuance of a license to a person who:

- Has discharged a sentence for a conviction of a felony in the five years immediately preceding his or her application date;<sup>301</sup> or
- Has discharged a sentence for a conviction of a felony pursuant to any state or federal law regarding the possession, distribution, manufacturing, cultivation, or use of a controlled substance in the 10 years immediately preceding his or her application date or five years from May 28, 2013, whichever is longer; except that the Executive Director may grant a license to a person if the person has a state felony conviction based on possession or use of marijuana or marijuana concentrate that would not be a felony if the person were convicted of the offense on the date he or she applied for licensure.<sup>302</sup>

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<sup>300</sup> § 24-34-104(6)(b)(II), C.R.S.

<sup>301</sup> §§ 12-43.3-307(1)(h)(I), and 12-43.4-306(1)(g)(I), C.R.S.

<sup>302</sup> §§ 12-43.3-307(1)(h)(II), and 12-43.4-306(1)(g)(II), C.R.S.

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These two provisions have created the unusual situation where an individual convicted of a non-marijuana drug crime must wait 10 years from the date of sentence discharge before becoming eligible for a license, but an individual who has committed murder or theft need only wait five years from the date of sentence discharge.

The emphasis on drug-related felonies may also have a disproportionate impact on certain communities where drug-related convictions tend to be more commonplace.

Additionally, a simple time restriction does not allow the Executive Director to take into consideration repetitive criminal history, or indicators of rehabilitation. The current system does not allow the Executive Director to deny a license to someone with repeated convictions for misdemeanor theft, for example. Similarly, these bars do not permit the Executive Director to grant a license to an individual who, perhaps, earned a college degree while incarcerated or show other demonstrable signs of rehabilitation, but now must wait 5-10 years before becoming eligible for a license.

Therefore, the General Assembly should amend the codes to prohibit the issuance of a license to a person for three years from the date of conviction of a felony or who is currently subject to a sentence for that conviction (i.e., the individual is still incarcerated or is on parole), or who is subject to a deferred sentence or a deferred judgment for a felony, whichever is longer, and to permit the Executive Director to take into account an applicant's criminal character or entire criminal record to the extent it poses a threat to the regulation or control of marijuana.

### **Recommendation 16 – Revise terminology related to the ownership of licensed marijuana businesses.**

In an attempt to expand ownership opportunities in the marijuana industry, Senate Bill 16-040 introduced several new ownership possibilities, none of which had corollaries outside of the marijuana industry. These included: direct beneficial interest owner, indirect beneficial interest owner and qualified limited passive investor. The Executive Director then promulgated rules creating three additional categories: financial interests, affiliated interests and business interests.<sup>303</sup>

Financial interests include:<sup>304</sup>

- Any direct beneficial interest owners;
- Certain indirect beneficial interest owners (i.e., a permitted economic interest holder or a commercially reasonable royalty interest holder who received a royalty of more than 30 percent); and
- Those in control, including those who:
  - Bear risk of loss and opportunity for profit;

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<sup>303</sup> 1 CCR § 212-1 M 103, Colorado Medical Marijuana Rules, and 1 CCR § 212-2 R 103, Colorado Retail Marijuana Code Rules.

<sup>304</sup> 1 CCR § 212-2, R 204.5(B), Retail Marijuana Code Rules.

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- Have final decision-making authority over the operation of a licensee;
  - Manage the overall operations of a licensee or its licensed premises, or a portion thereof;
  - Guarantee a licensee's debts or production levels;
  - Are beneficiaries of a licensee's insurance policies;
  - Receive the majority of a licensee's profits, relative to other recipients of profits; or
  - Acknowledges liability for a licensee's federal, state and local taxes.

Affiliated interests include.<sup>305</sup>

- Certain indirect beneficial interest owners, such as those holding a commercially reasonable royalty interest of 30 percent or less, a profit sharing plan employee or a qualified institutional investor; or
- Any disclosable interest that is not a financial interest, such as indirect financial interest, lease agreements, secured or unsecured loans, security interests in fixtures or equipment with a direct nexus to marijuana.

These various categories of ownership and financial interests have created confusion and have been minimally utilized.

However, as part of a larger effort to increase investment in the marijuana industry, House Bill 18-1011 (HB 1011), which was ultimately vetoed, would have streamlined these categories into more easily recognizable, and ideally more useful, categories: controlling beneficial owners, passive beneficial owners and indirect financial interest holders. These are commonly used business terms outside of the marijuana industry. Importantly, HB 1011 was vetoed on grounds having nothing to do with these terms or their definitions.

Therefore, the General Assembly should revise the language related to the ownership and financial interests of licensed marijuana businesses to comport with the terms utilized in HB 1011, specifically:

- Controlling beneficial owners,
- Passive beneficial owners, and
- Indirect financial interest holders.

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<sup>305</sup> 1 CCR § 212-2, R 204.5(C), Retail Marijuana Code Rules.

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**Recommendation 17 – Repeal the requirement that medical marijuana patients who have submitted an application to the medical marijuana registry, but who do not yet have their registry identification cards, prove submission of the application by providing a certified mail return receipt.**

In order to obtain medical marijuana from a medical marijuana center, or to demonstrate to law enforcement that a patient is entitled to possess medical marijuana, an individual must apply to CDPHE for a medical marijuana registry identification card. Amendment 20 generally requires CDPHE to deny or issue a registry identification card within 35 days of submission of the application.<sup>306</sup>

As originally envisioned, such applications would be submitted in hard copy, in person or via mail. Amendment 20 addressed the lag time between application submission and delivery of the registry identification card by providing:

A patient who is questioned by any state or local law enforcement official about his or her medical use of marijuana shall provide a copy of the application submitted to [CDPHE], including written documentation and proof of the date of mailing or other transmission of the written documentation for delivery to [CDPHE], which shall be accorded the same legal effect as a registry identification card, until such time as the patient receives notice that the application has been denied.<sup>307</sup>

In requiring proof of “the date of mailing or other transmission,” Amendment 20 does not necessarily prescribe what that proof must look like.

The Medical Code, however, is very prescriptive on this matter:

Prior to initiating a sale [of medical marijuana], the employee of the medical marijuana center making the sale shall verify that the purchaser has a valid registry identification card issued pursuant to section 25-1.5-106, C.R.S., or a copy of a current and complete new application for the medical marijuana registry administered by [CDPHE] that is documented by a certified mail return receipt as having been submitted to [CDPHE] within the preceding 35 days, and a valid picture identification card that matches the name on the registry identification card. [ ] If the purchaser presents a copy of his or her application at the time of purchase, the employee must contact [CDPHE] to determine whether the purchaser’s application has been denied. . . . [emphasis added]<sup>308</sup>

Whereas the constitution requires the patient to provide proof of mailing or transmission, the Medical Code dictates that only a certified mail return receipt is acceptable, and goes on to require verification with CDPHE.

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<sup>306</sup> Colo. Const. Art. XVIII, § 14(3)(d).

<sup>307</sup> Colo. Const. Art. XVIII, § 14(3)(d).

<sup>308</sup> § 12-43.3-402(5), C.R.S.

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However, in August 2017, CDPHE launched a new on-line application process, so patients no longer need to submit their applications in person or by mail. Thus, it would be unusual for a patient to have the proof of mailing demanded by the Medical Code. Indeed, the Medical Code is outdated in the sense that it does not provide for the transmission of an application by any other means.

Therefore, the General Assembly should repeal the requirement that patients in such circumstances provide a certified mail return receipt, and simply require them to provide proof of application transmission and authorize the Executive Director to promulgate rules on the forms this proof can take. As a safeguard, employees of medical marijuana centers should still be required to verify the status of the application.

**Recommendation 18 – Direct that all money collected by the Executive Director as the result of civil penalties assessed under the codes be deposited in the state’s General Fund.**

The Marijuana Cash Fund (Cash Fund) is created in section 12-43.3.-501(1)(a), C.R.S., and all moneys collected pursuant to the codes are to be deposited into it. Indeed, section 12-43.3-502(1), C.R.S., reinforces this intent by directing that all money collected from any fine imposed pursuant to the codes be credited to the Cash Fund.

Ordinarily, when an agency is given fining authority, or the authority to assess civil penalties, such funds are credited to the state’s General Fund. This is done so that the agency has no incentive to impose fines, other than taking legitimate disciplinary action. Examples of programs adhering to this principle include those regulating accountants,<sup>309</sup> collection agencies,<sup>310</sup> pharmacists and pharmacies,<sup>311</sup> electricians,<sup>312</sup> professional engineers,<sup>313</sup> professional land surveyors,<sup>314</sup> architects,<sup>315</sup> chiropractors,<sup>316</sup> direct-entry midwives,<sup>317</sup> physical therapists,<sup>318</sup> plumbers<sup>319</sup> and veterinarians<sup>320</sup> to name a few.

Importantly, no allegations of impropriety were made during the course of this sunset review. Rather, this is simply a “good government” recommendation.

For all these reasons, the General Assembly should direct that all money collected by the Executive Director as a result of fines assessed under either code be deposited in the state’s General Fund.

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<sup>309</sup> § 12-2-123(5)(b), C.R.S.

<sup>310</sup> § 5-16-134(2), C.R.S.

<sup>311</sup> § 12-42.5-124(5)(b), C.R.S.

<sup>312</sup> § 12-23-118(7), C.R.S.

<sup>313</sup> § 12-25-105(9), C.R.S.

<sup>314</sup> § 12-25-205(8), C.R.S.

<sup>315</sup> § 12-25-308(4)(b), C.R.S.

<sup>316</sup> § 12-33-117(1.5), C.R.S.

<sup>317</sup> § 12-37-107(2), C.R.S.

<sup>318</sup> § 12-41-122(2), C.R.S.

<sup>319</sup> § 12-58-116.5(4), C.R.S.

<sup>320</sup> § 12-64-111(4), C.R.S.

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## **Recommendation 19 – Direct the Executive Director to track license disqualifications and disciplinary actions taken based on criminal history.**

In 2013, the General Assembly created a tenth sunset criterion, which requires the Colorado Office of Policy, Research and Regulatory Reform to evaluate whether the agency undergoing sunset review:<sup>321</sup>

...through its licensing or certification process imposes any disqualifications on applicants based on past criminal history and, if so, whether the disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis...shall include data on the number of licenses or certifications that were denied, revoked, or suspended based on a disqualification and the basis for the disqualification.

Because it is a newer reporting requirement, some programs and organizations do not track this information. Because the General Assembly finds this information to be an important function of a sunset review, the Executive Director should be tracking disqualifications and disciplinary actions based on past criminal history. However, the Executive Director is not.

In the 2015 sunset report of the Retail Code, a recommendation similar to this was made to the Executive Director as an administrative recommendation. The recommendation was not implemented at that time due to programing and resource limitations. However, since that recommendation was not followed and the General Assembly finds this information to be useful, the General Assembly should now direct the Executive Director to track this data.

## **Recommendation 20 – Make technical changes to the codes.**

As with any law, the codes contain instances of obsolete, duplicative and confusing language, and the codes should be revised to reflect current terminology and administrative practices. These changes are technical in nature, so they will have no substantive impact.

The General Assembly should make the following technical changes:

- **Section 12-43.3-103, C.R.S.** This section contains various dated provisions pertaining to the original implementation of the Medical Code. The General Assembly should repeal the provisions that are no longer applicable.
- **Section 12-43.3-202, C.R.S.** The length and variety of topics covered in this section make it difficult to navigate. The General Assembly should divide this section into three new sections: duties of the Executive Director, powers of the Executive Director and rulemaking.

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<sup>321</sup> § 24-34-104(6)(b)(IX), C.R.S.



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- **Section 12-43.3-403(4), C.R.S.** House Bill 18-1259 (HB 1259), which took effect on August 8, 2018, authorized marijuana businesses, including medical marijuana optional premises cultivations (OPCs), to provide samples of product to no more than five managers employed by such licensees for the purposes of quality control and product development. Section 12-43.3-403(4), C.R.S., specifically authorized OPCs to provide such samples. However, House Bill 18-1381 (HB 1381) repealed mandatory vertical integration under the Medical Code by repealing and re-enacting all of section 12-43.3-403, C.R.S., as it will exist on June 30, 2019. This means that the provisions of HB 1259 relating to OPCs will repeal on June 30, 2019. Since this was clearly a drafting error, the General Assembly should ensure that the provisions of HB 1259 relating to OPCs continue past June 30, 2019.
  - **Section 12-43.3-403(4), C.R.S.** House Bill 18-1389 (HB 1389), which took effect on May 24, 2018, authorized the Executive Director to issue centralized distribution permits to OPCs and retail marijuana cultivation facilities. However, HB 1381 repealed mandatory vertical integration under the Medical Code by repealing and re-enacting all of section 12-43.3-403, C.R.S., as it will exist on June 30, 2019. This means that the provisions of HB 1389 relating to OPCs will repeal on June 30, 2019. Since this was clearly a drafting error, the General Assembly should ensure that the provisions of HB 1389 relating to OPCs continue past June 30, 2019.
  - **Section 12-43.3-404(9), C.R.S.** House Bill 1381, in repealing mandatory vertical integration in the Medical Code, obviated the need for medical marijuana-infused products (MMIPs) manufacturers to be affiliated with an OPC. However, due to an apparent oversight, this requirement was not explicitly repealed from the Medical Code and has caused some confusion. Therefore, the General Assembly should repeal this section as obsolete.
  - **Section 12-43.3-901(4)(e), C.R.S.** House Bill 18-1381 repealed from the Medical Code, mandatory vertical integration and replaced it with a production management system identical to that created in the Retail Code. As such, patients and their plant counts are no longer tied to a specific medical marijuana center. Due to an apparent oversight, the unlawful acts section of the Medical Code was not amended to account for this change, so it remains unlawful for a medical marijuana licensee to possess more than six plants and two ounces of marijuana for each patient registered with the medical marijuana center. Therefore, the General Assembly should repeal this section.
  - **Section 12-43.4-103, C.R.S.** This section contains various dated provisions pertaining to the original implementation of the Retail Code. The General Assembly should repeal the provisions that are no longer applicable.
  - **Section 12-43.4-202, C.R.S.** The length and variety of topics covered in this section make it difficult to navigate. The General Assembly should divide this



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section into three new sections: duties of the Executive Director, powers of the Executive Director and rulemaking.

- **Section 12-43.4-901(4)(f), C.R.S.** House Bill 16-1261 repealed the limitation on retail marijuana stores selling more than one-quarter of an ounce of marijuana to non-Colorado residents. Due to an oversight, a conforming amendment was not made to the unlawful acts section of the Retail Code. Therefore, the General Assembly should repeal this provision as obsolete.