



Washington State
Liquor and Cannabis Board

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**Home Delivery of
Medical Cannabis Report**
Legislative Directed Study

Delivered: December 18, 2018



Home Delivery of Medical Marijuana

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I. Executive Summary

The 2018 session of the Washington State Legislature considered legislation to authorize licensed cannabis retailers in Washington to provide home delivery of marijuana for medical use to qualified medical marijuana patients or designated providers. That measure was not enacted, but led to adoption of a proviso in the 2018 Supplemental Operating Budget directing the Washington State Liquor and Cannabis Board (WSLCB) to study options for such a system and issue a report to the Legislature with “findings and recommendations regarding implementation of a medical marijuana home delivery system.”

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

- Status Quo, or no change
- Authorization of home delivery for marijuana products to qualified patients by extending the current regulatory framework and adapting it to cover the mobile setting
- Stakeholder-offered ideas for incentives that might provide stronger encouragement to businesses to offer delivery service for patients

If policymakers wish to allow home delivery for medical marijuana patients, the WSLCB would recommend the second option as the most prudent approach to structuring a delivery system. The discussion in this report of the recommended option provides a sense of agency thinking on some programmatic details in order to illustrate the general approach that would be taken in crafting a delivery system. The WSLCB also requests that any authorizing legislation be written so as to delegate to the agency the opportunity to determine the major portion of program details through administrative rule.

The separate problem of the supply of medically-compliant product needs to be addressed. Stakeholders repeatedly told the agency that a lack of supply of medical marijuana products, also called “Department of Health-compliant” products, is a distinct problem that needs to be addressed regardless of what the delivery system might be. WSLCB has launched a rule making project to consider requiring pesticide testing of recreational products, which would remove a disincentive for producers to create more DOH-compliant products.

II. Introduction

In 2018, the Legislature considered a measure to authorize the home delivery by licensed marijuana retailers of marijuana for medical use by qualifying medical marijuana patients. House Bill 2574 was not enacted, but formed the basis of a proviso which was included in the enacted 2018 supplemental operating budget, ESSB 6032. (See Appendix C) The proviso directed the Washington State Liquor and Cannabis Board (WSLCB) to conduct a study of “the development and implementation of a system for the home delivery of medical marijuana products to qualifying medical marijuana patients by licensed medical marijuana retailers.” The Board was also directed by the budget proviso to report “findings and recommendations regarding the implementation of a medical marijuana home delivery system.”

The WSLCB has used the Cole Memorandum (Appendix B)¹ as the directive for its regulatory framework. Despite the memorandum’s having been rescinded by then-Attorney General Jeff Sessions in January of 2018, the WSLCB continues to evaluate regulatory options based on those guidelines, in conjunction with the agency’s mission to promote public safety and trust through fair administration and enforcement of marijuana laws. In order to consider the home delivery of marijuana to medical patients, the WSLCB must balance the goal of providing access to patients with the need to maintain robust regulation of a product that remains a controlled substance under federal law.

Understanding the size of the medical market

Since the inception of the Department of Health database of authorized medical patients, a total of 33,384 cards have been issued. As of June 29, 2018, 15,136 cards were active. Joining the database is optional for adults, while minor patients and their caregivers are required to be entered in the database. Authorized patients and designated providers have the option of removing themselves from the database or not renewing after the course of a year. Based on traceability data from 2017, it is estimated that sales to authorized medical patients made up approximately 1.6 percent of the total marketplace. While 15,136 patients are currently authorized in Washington State, it has been suggested that the actual number of people using marijuana for medicinal reasons is much larger.

Research on a population of marijuana users in Israel found that of the population studied, 42 percent identified as recreational users, 38 percent identified as unlicensed medical users, and only 5.6 percent identified as licensed medical users. The licensed medical users tended to be older than both recreational and unlicensed medical users.² Though Israel is obviously a very different cultural and regulatory context, it provides insight into why licensed medical populations may be smaller, with some choosing not to participate in a licensing structure for

privacy reasons, or because they may not feel it necessary or beneficial when they are able to acquire recreational marijuana products without the authorization.

Current Transport Processes

Marijuana products must be moved from producers to processors, processors to other processors, and from producers and processors to retail stores. The current system for moving marijuana products between licensed marijuana businesses is largely conducted by these licensees on their own behalf. However, a small part of the system is operated by firms that have been awarded a transportation license. The WSLCB has awarded 18 such licenses, 15 of which are active. These licensees, located on both sides of the Cascades, are clustered around Spokane and along the I-5 corridor. Since February of 2018, holders of the transportation license have transported more than 8,000 inventory items (products), which represents just 0.15 percent of all marijuana product transfers over this period. A majority of these deliveries by transportation licensees, 60 percent, are from processors to retailers.

WSLCB licensing staff report that some applicants have sought to use a home residential address in association with a license, which is not allowed. Some applicants have sought to include multiple addresses under one license (also not allowed) in the interest of sharing vehicles, warehousing opportunities and to make product transport easier. In addition, some local authorities have expressed concerns about the 48 hours current rules allow before transport of product must occur; the concern revolves around product storage in the interim period prior to transport.

From a compliance perspective, some enforcement actions have occurred with respect to these licensees. Over the past two years, two verbal warnings and one administrative violation notice have been issued to transportation licensees. This amounts to 8.3 percent of transportation licensees that have been the subject of some form of enforcement action related to transportation issues. By way of comparison, 8.4 percent of producer or processor licensees have received some form of violation related to transportation.

It should also be noted that there are reports of numerous home delivery providers operating illegally. For example, the *Seattle Weekly* reported that, “A quick Yelp! check on “Best Marijuana Delivery in Seattle” brings up scores of listings, revealing that locals have been more than happy to openly advertise delivery services. Even though the city [of Seattle] has prosecuted several of these illegal operations, at least 14 persist, according to the city’s Finance and Administrative Services office.”³

III. Regulatory Structures from Other Jurisdictions

To provide context for how home delivery is managed, the WSLCB collected regulatory and policy information for programs in several other states as well as Canada. Many state programs demonstrate some similarities, such as having the delivery service as a part of the retail establishment, and having a maximum amount that can be delivered or transported at one time – measured either as a maximum monetary value or as an amount of marijuana measured in weight of product. All jurisdictions required age verification of the recipient, and some type of traceability mechanism to log or monitor the movement and delivery of goods. It should be noted that while information on Canada’s delivery framework was obtained, much of Canada’s regulatory structure is not an option for Washington because the Canadian system uses the federal postal service as the delivery system, which is made possible only by virtue of the longstanding legality of medical marijuana in Canada *at the federal level*. Specific features of programs are listed below.

Conversations with regulators in some of the jurisdictions reviewed illuminated a few lessons learned. In Oregon, for example, a notable feature of the program there is that it only truly operates in a small number of the most densely populated urban areas, highlighting the problem of economies of scale, geography and population density. Retailers are not earning much revenue through delivery, so it’s a small part of the market. Regulators report that a number of concerns they anticipated at the outset of the program, such as security, minor access and diversion, have not occurred. There have been no reports of robberies or burglaries. There have been complaints from medical patients about insufficient access in local areas with bans.

In Colorado, the ongoing struggle over legislative authorization of home delivery has featured opposition from local governments and the law enforcement community. The governor vetoed legislation in 2018 largely over just such concerns. There have been concerns about whether enforcement responsibility would be assigned to local or state authorities. Cost concerns have been prominent. It is expected that few local governments would opt in to authorize home delivery, and that medical patients would have concerns about how limited access would be. Regulators there advise that broad flexibility be allowed through rule making, and emphasized the importance of local control, cost concerns and enforcement authority.

In Canada, a primary concern the system there faced was odor – so program requirements were revised to ensure no odors are allowed to escape from packaging used in the delivery process.

Oregon – Recreational and Medical

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

California – Recreational and Medical⁴

- During delivery, the employee may not engage in any activity except delivery and necessary rest, fuel, or vehicle repair stops
- During delivery, delivery employee must carry a copy of retailer’s current license, the employee’s government-issued ID, and an ID badge provided by the employer
- Delivery employee must confirm the identity and age of the delivery customer and place cannabis product in a re-sealable child-resistant opaque exit package
- Deliveries are allowed only to physical addresses and not on publicly owned land or on land in a building leased by a public agency, including land held in trust for a Tribe or Tribal member, unless authorized by applicable Tribal law
- Cannabis must be in a locked box, container or cage that is secured on the inside of the vehicle and not visible to the public
- Cannabis cannot be left in an unattended vehicle unless the vehicle is locked and equipped with an active alarm
- Vehicles must be outfitted with GPS tracking system attached to vehicle; licensee must own a dedicated GPS device used for delivery only
- Licensed retailer must be able to identify the location of all delivery vehicles making deliveries
- No use of unmanned vehicles is allowed; deliveries must be made in person
- Cities and counties can prohibit delivery or set more restrictive requirements
- Delivery employee cannot carry cannabis goods in the vehicle in excess of \$10,000 at any time
- Delivery employee may only perform deliveries for one licensed retailer at a time and must depart and return to the same licensed premises before taking possession of any cannabis goods from another licensee to perform deliveries

- Driver must have a delivery inventory ledger of all cannabis goods provided to the driver, with track and trace identifier, weight, volume; after each delivery, driver must update inventory ledger to reflect current inventory in possession of the driver
- Driver must maintain a log that includes all stops
- Delivery receipts must be prepared, and contain name and address of the retailer, first name and employee number of the delivery employee and the employee who prepared the order, first name of the customer and a retailer-assigned customer number for the person ordering delivery, date and time of delivery request, delivery address, detailed description of all cannabis goods, amount paid, date and time delivery was made, signature of the customer, handwritten or electronic
- Delivery employee may only travel between the licensee's premises, one delivery address to another, and from a delivery address back to the licensed retailer's premises.

Nevada – Recreational and Medical⁵

- Deliveries can be by a registered agent employed by a marijuana retail store or by an independent contractor which has a service agreement with a retail marijuana store to perform deliveries and whose name has been disclosed to the Department of Taxation
- The name of retail marijuana retail store and all independent contractors who perform deliveries must be published on the Department's website
- The Department must have confirmation that any delivery personnel holds a valid marijuana establishment agent registration card
- Delivery agent must obtain verification of the identity and age of the consumer
- Delivery agent cannot deliver any other item except for paraphernalia or merchandise directly related to the marijuana product
- Delivery only permitted during hours the retail marijuana store is open for business
- Delivery agent can travel only between the retail marijuana store and the delivery destination, making no unnecessary stops, and fuel stops must be documented
- Marijuana products must be secured at all times during the delivery
- Retail store must have a copy of a delivery manifest generated by the seed-to-sale tracking system
- Before delivery, the retail store must enter the delivery information into the seed-to-sale tracking system
- Manifest must include date and time of delivery, name and address and license number of the retail store, name and address of each customer, name and quantity of each item delivered, make, model license plate number and delivery vehicle identification card, name, number of the agent registration card and signature of each delivery agent

- After delivery, the retail store must ensure the trip plan is accurate
- Retail store must reconcile all transactions in seed-to-sale tracking system each day
- Five ounces of marijuana is the limit for deliveries in a single trip and one ounce to an individual consumer
- No delivery to address with a gaming license; deliveries only to private residences
- Prior to delivery, the agent must confirm by telephone that the consumer ordered the product and verify the identity of the consumer
- Marijuana must be stored in a lockbox or locked cargo area within the vehicle, not be visible from outside the vehicle, and contained in sealed packages which remain unopened during delivery
- No one can be in the delivery vehicle who is not an agent registered for delivery
- The Department must approve any vehicle to be used for delivery and the vehicle identification card issued by the Department must be kept in the vehicle at all times
- Delivery vehicles cannot have advertising or signage relating to marijuana, and must have an audible car alarm
- Retail store must provide refrigeration for perishable marijuana products, if required

New York – Medical⁶

- A registered organization may not sell, dispense or distribute approved medical marijuana products via a delivery service without prior authorization from the New York State Department of Health (“Department”). Registered organizations must submit a proposed Delivery Service Plan to the Department. The plan must include or address:
 - Hours of delivery and locations to be served
 - Registered organization location(s) that will provide delivery service
 - Proposed fee(s) for delivery, if any, including justification supporting the fee(s)
 - The registered organization cannot change the Delivery Service Plan or actual delivery procedures without written approval from the Department
 - Vehicles must be approved by the Department
 - Each delivery vehicle must be identified, including make, model, year, vehicle identification number (VIN), and plate number
 - Vehicle must have locked, secure storage compartment not visible outside the vehicle
 - Delivery organization’s plan must describe precautions it will take against theft or accidental loss of marijuana products and cash, including how products and cash will be managed

- Plan outlines emergency procedures in the event of theft or accidental loss, including communication to the Department and a state or local law enforcement agency
- Emergency procedures to secure medical marijuana products and cash aboard a delivery vehicle in the event the delivery vehicle is disabled
- Products will be transported from the manufacturing or dispensing facility in a locked, safe and secure storage compartment that is securely attached to the vehicle transporting the marijuana, and that is not visible from outside the vehicle
- All delivery vehicles are staffed with a minimum of two registered organization employees, one of whom must remain with the vehicle at all times
- Transport team member must possess a copy of the transportation manifest at all times when transporting marijuana products
- No transport or delivery outside of New York State's border, to any Native American reservations, or to federally owned properties within New York State
- Description of a clear and efficient process for receiving and fulfilling delivery requests from certified patients, including a method to validate that the certified patient or designated caregiver will be available to personally accept delivery
- Method to validate the patient's certification information
- Method to validate the patient or designated caregiver's registry identification card
- Certified patient or designated caregiver must personally sign for products delivered
- Capture delivery transactions in the registered organization's seed-to-sale system
- Provide sealed, tamper-proof packaging to prevent tampering during transport
- Transportation manifest will be completed contemporaneously with delivery, and submitted to the Department within one week after completion of the delivery

Massachusetts – Medical⁷

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

- Only a Registered Marijuana Dispensary (RMD) agent may transport marijuana to registered patients or personal caregivers
- The RMD must weigh, inventory and account for on video all marijuana to be transported prior to its leaving the origination location
- Complete a shipping manifest for retention by the origination location and carry a copy of the manifest with the products being transported
- Retain shipping manifests for at least one year

- Transport must be in a secure, locked storage compartment that is part of the vehicle transporting marijuana
- Marijuana must not be visible from outside the vehicle
- Transport must be in a vehicle that bears no markings indicating transport of marijuana or the name of the RMD
- Delivery times and routes must be randomized
- Transport vehicles must be staffed with a minimum of two agents, at least one of whom must remain with the vehicle at all times
- Each delivery agent must have access to a secure form of communication with personnel at the sending site at all times
- Each agent must carry Department-issued registration card at all times
- Each vehicle used for transport must have a GPS monitoring device that is monitored by the RMD during transport

New Mexico – Medical⁸

- Department of Health authorizes couriers, who can contract with a licensed non-profit producer to deliver usable cannabis to qualified patients and caregivers
- Uniform pricing for all producers is required
- Couriers are prohibited from requesting or receiving payment from a qualified patient
- Courier must verify the recipient's identity with a photo ID and a department-issued cannabis identification card
- Courier cannot possess cannabis longer than seven days
- Couriers must train their personnel regarding confidentiality of information concerning patients and primary caregivers
- Personnel of a courier cannot possess a firearm while distributing cannabis
- The Department issues an identification card to each authorized employee of an approved courier which authorizes that individual to transport cannabis; the employee must carry the card at all times
- Courier approval by the Department is valid for one year
- Couriers must adopt, maintain, and enforce chain of custody procedures and documentation to ensure appropriate tracking and inventory of usable cannabis.
- Couriers must adopt, maintain and enforce security requirements to ensure cannabis transported is secured and to promote the safety of courier personnel as well as patients and caregivers who receive packages.

- As part of the application for approval, a courier must submit plans for a host of operational procedures, including plans for delivery, security, safety, descriptions of all vehicles to be used, a list of employees, criminal history documentation, fees, producers for whom they will deliver, training materials for drivers, protocols for contacting and communicating with qualified patients and caregivers, lists of owners and people with authority over the management or policies of the courier, etc.

Colorado – Delivery Prohibited

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

Advocates have pushed for home delivery in Colorado’s Legislature repeatedly. Initially, the effort included both recreational and medical products, and later the push was narrowed to the medical system. Some of the issues of concern to regulators and law enforcement regarding home delivery are as follows:

- Whether to allow third parties to perform delivery, or limit authorization to retailers;
- Defining the transaction as a direct relationship between the retailer and the customer is a goal;
- Determining the age and identity of the customer taking delivery; requiring body cameras has been discussed in this context;
- Hoping to avoid cash transfers, using electronic payment in advance, is the goal;
- Limits on the total amount of product carried;
- Would a vault be required?
- Crossing jurisdictional boundaries is a concern; how many local governments would opt in to allow deliveries?
- How much of the enforcement obligation would fall upon state regulators, or upon local law enforcement.

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

- Traceability is done with a tracking number on the parcel to be delivered
- Deliveries are done through the national postal system; UPS and FedEx not interested in providing the service; some retail stores deliver themselves, if destination is close
- No cost for delivery

- Edibles and concentrates cannot be delivered
- The licensee is responsible for ensuring security, traceability
- Licensees decide whether to require signatures of customers
- While there is no age limit for medical marijuana, a responsible adult's approval is required
- Age verification becomes a requirement with delivery of recreational product
- Customers can pick up deliveries at a post office
- No unique restrictions regarding delivery vehicles are in place
- Packages cannot have identifying markings
- No odors from the package are allowed
- Delivery driver doesn't even know the parcel contains cannabis
- Patients buy cannabis through a web portal; credit cards are used, no cash ... it is an electronic transaction

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

IV. Stakeholder Feedback

The WSLCB compiled a contact list of more than 50 external stakeholders for the home delivery study. The stakeholder list, including the agency's Cannabis Advisory Council and several advocates for medical marijuana patients, was a primary vehicle for outreach efforts to invite interested parties to engage with the agency in studying this issue. The agency proactively reached out to several state agencies, local governments, law enforcement, academic researchers, industry trade associations, medical marijuana patient advocates, and concerned citizens. Individual companies and any other parties expressing interest were also informed of these activities.

A meeting with stakeholders was held June 19, 2018, with participation both in person at agency headquarters and by telephone. That "webinar" was recorded and made available to any interested parties unable to attend the meeting. Further input was collected from stakeholders over the course of the summer, as they chose to provide it -- by email or telephone. A draft report was provided to stakeholders in October, at which time further comments were received.

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

Boosting Production of Medical Products

Patients expressed concerns that they had higher priorities they wanted addressed prior to delivery. Many patients expressed a desire for greater availability of DOH-compliant products, or products held to an elevated testing standard. Many patients also desired a wider variety of products and potencies, and felt that availability of products that were tailored to patients' needs was paramount. Patients were also concerned about the price of products and felt that adding delivery may add expense. *[Note: Any licensed retail store can sell medically compliant products. Any customer can purchase DOH-compliant product, with the exception of high-THC compliant product, which can only be purchased by cardholding patients.]*

Safety of driver and product recipient

Nearly all stakeholders mentioned concern for the safety of drivers and recipients of product. As retail stores continue to face banking system barriers that prevent or inhibit the use of credit cards, drivers and patients may need to hold large amounts of cash in order to complete a

delivery transaction, which may increase susceptibility to theft. Drivers also may feel at risk when transporting large quantities of marijuana due to its value on the black market. Some suggested that if employees were to deliver cannabis to medical patients, there should be two people, which may be economically challenging for the retailer. It was suggested that the vehicle should be unmarked, for the safety of the drivers. However this may pose a risk to the safety of the patient (who may be unable to recognize the vehicle), and may present difficulties for enforcement officers trying to identify the vehicle. Safety was also a concern for members of the patient community, who explained that some patients may have limited mobility or capacity, and had concern over any negative interaction that may occur during the transaction. Stakeholders were curious as to how the delivery driver would be trained, particularly if the driver must go through medical consultant training in order to deliver to patients.

HIPAA compliance and Patient Privacy

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

ID Verification

Some retailers expressed concern over the identification verification process. Retailers explained that often they rely on teams of employees and management to handle ID verification. They further explained that when an ID is refused, it is often important for the manager to be present to support the employee in refusing service due to a false, expired, questionable, or unavailable ID. Retailers had concern for having their employees verify IDs away from the retail store, and potentially manage sale refusals without support staff. There was also concern about how a retail store would verify a patient recognition card when this can only be done by accessing the medical marijuana authorization database.

Economic viability

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

Rural areas, bans and moratoria

Retailers had a series of questions and concerns in regard to how delivery boundaries would be identified and managed. In densely populated areas, who would get a delivery when multiple stores were within reach? In rural areas, how would patients be charged in order to reflect the cost of long distance deliveries, and how could this be made affordable or equitable for patients? Retailers also wondered if they would be able to deliver in areas that have a ban or moratorium that does not allow for retail stores and, if not, how patients in this area would be served. Further, retailers were curious as to whether or not they would be able to deliver in buffer zones, for example, if a patient lived within 1,000 feet of a school. Local governments expressed desires to retain authority to impose restrictions granted under current law.

Delivery Service Providers

Some perceived delivery service as an economic opportunity that could stay in the hands of the retailer if service were to expand to recreational customers. Some felt that the process of delivery could be handled by a third party with delivery-specific experience. Others considered delivery to be an equity opportunity for new business owners who had wanted to participate in the cannabis industry but may not have had the resources to engage in the initial licensing process. Still another stakeholder suggestion was to allow retailers who have been awarded a license by the LCB, but have been unable to open for business due to a local ban or moratorium, to provide delivery service as a means of allowing these licensees to begin their active involvement in the industry in some manner.

Support for Medical Delivery

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

Agency Responses

Stakeholder input was considered and is reflected in a variety of ways in this report and in the approach the agency would be prepared to recommend. WSLCB's thinking about how to create a practical delivery system was very much influenced by perceptions of patient advocates. Some steps that could hold costs in check – especially costs borne by patients/customers and retailers – are an outgrowth of stakeholder ideas. The ideas in the section of this report on incentives for the industry to offer delivery service come directly from suggestions made by stakeholders. Included in this category is the idea of exempting marijuana products purchased by authorized patients from the excise tax, the idea of allowing delivery of marijuana products to recreational customers as well as medical-use customers, the suggestion that firms other than just marijuana retailers be allowed to provide delivery service, and the idea of awarding

the opportunity to provide delivery to retail licensees who are in local jurisdictions with a ban or moratorium. Of course, the “no change” or status quo option reflects the suggestion of stakeholders who are opposed to home delivery.

V. Structural Challenges

A. Enforcement Concerns

Enforcement and Education Division staff of the WSLCB were consulted in some detail as part of this study. The conclusion emerging from the conversations among enforcement staff is that home delivery would present certain challenges and costs in order to maintain effective oversight and compliance.

Some of the concerns identified include the following:

- An avenue for diversion
- Youth access
- Verifying drivers are in compliance with requirements
- Confirming the amount of product leaving licensed premises
- The lack of ability to inspect delivery vehicles and conduct oversight without the legal authority to stop delivery vehicles
- Potential third party contracting creates challenges for compliance
- Risk of robberies, and theft of cash and marijuana products
- Driver safety, given unknown conditions at a private residence away from the security measures in place at retail establishments, such as cameras, other employees, etc.

Enforcement would require new resources to expand staff and to train for and conduct oversight. Mandated video recordings is an enforcement strategy that was discussed and could mitigate compliance risks; however, this may require further consideration to protect patient privacy and may impose significant costs on retailers.

B. Financial Barriers

Any consideration of a policy framework for home delivery of marijuana to medical marijuana patients must confront the structural financial barriers to creating an effective delivery system. Medically-compliant product is required to undergo more rigorous testing than marijuana products intended for the recreational market. Specifically, testing for pesticides and heavy metals is required for medical product but not for recreational products. This means additional and more costly testing procedures must be conducted for medical marijuana products compared to recreational marijuana products. The cost structure constitutes a disincentive for producers to create medically-compliant products for the market.

The WSLCB has embarked upon a rule making effort aimed at requiring that recreational products also undergo testing for heavy metals and pesticides. If such a regulation is adopted,

the cost differential between the two types of products would be reduced or even eliminated. This would remove a major barrier to expanded production of medically-compliant product.

The cost of the delivery infrastructure itself would confront retail licensees – vehicles, fuel, maintenance and insurance, drivers' wages, equipment, training employees in additional procedures, and other costs to providing the service.

Some stakeholders foresee potentially quite limited market demand. This presents a challenge of economies of scale. While it is assumed the retailer would charge a delivery fee, it may be difficult for medical patients to afford a delivery fee that would be high enough to cover the costs. It may be worth noting that some adult patients not currently in the database may choose to register in the database if delivery becomes available only to cardholding patients. Such an outcome might increase the size of the market.

In heavily populated parts of the state, there could be many retailers potentially in competition for a limited pool of potential customers who are authorized medical patients or caregivers. Conversely, in lightly populated areas, the relative absence of a customer base would render it especially difficult to make delivery financially viable.

There are structural financial barriers to creating an effectively functioning home delivery system of medical marijuana in Washington. In short, by itself a system for home delivery won't be sufficient. State policymakers and the WSLCB will also need to consider additional measures – separate from the delivery system – to achieve the goal of access to home delivery of marijuana products for authorized patients and caregivers.

VI. Program Design Questions

Overarching challenges

Any delivery system will face certain common policy questions and challenges. To an extent, these system design questions are independent of the particular approach under consideration.

There are myriad specific program design questions that merit closer attention than this interim study has attempted. If a home delivery system is to be authorized, the WSLCB would likely begin with a review of rules currently in place that apply to transportation licensees. Further, the existing rules governing transportation licensees were not evaluated for their applicability or inapplicability to home delivery for medical patients.

The table below is intended to be illustrative. It identifies many, but not all, of the questions that may need to be answered in the process of designing a regulatory program providing for home delivery of medical marijuana.

Delivery Program Design Issues

Issue	Option(s)	Pros	Cons
Authorized Entity	Licensed Retailer	Easier enforcement	Limits pool of potential providers
	New License Type: distributor/delivery	Enlists market forces	More complex to enforce
Vehicle Requirements	Registered with LCB	Facilitates oversight	Administrative costs and IT system demand
	Lockbox in trunk	Improves public safety	Raises costs for delivery provider
	GPS device required, marijuana markings prohibited	Improves public and driver safety by facilitating monitoring	Equipment cost for delivery provider
	Passenger prohibition	Reduces cost and risk of non-compliance	May reduce safety for driver
Issue	Option(s)	Pros	Cons

Driver Training Requirements	Budtender permit, medical database verification skills	Improved compliance, quality of service to patients	May increase costs for delivery provider
Driver Training Requirements	Medical Consultant	Higher level of service to patients	Raises costs for delivery provider; removes medical consultant from retail premises during delivery
Hours of Operation	Same as retail shop	Consistency facilitates enforcement	None
Product Quantity limits	Per person medical product limit for number of customer orders being filled in one trip	Limits could be set based on daily purchase caps for a given number of days, such as a 30-day supply of patient need	Economies of scale for providers is impacted to some degree
Eligible Product type	Medically compliant product only	Reduces some program risks	Severely limits financial viability of providing delivery service
	Medical and adult use	Improves financial viability for providers to offer service	Higher risk related to theft, diversion, etc.
Packaging	Child Resistant outer packaging	Reduces public safety concerns	Raises costs for providers
Cash Carrying Limits	Total cost of orders out for delivery plus \$200 for change purposes	Reduces public safety concerns	Logistical challenge for providers in cash-only industry
Service Areas	Local bans honored	Recognizes authority of local officials	Limits patient access to service; enforcement complication
Operational Procedure	Manifest contents; several required data elements to consider	Important public safety component	Burden and cost placed on delivery provider
Issue	Option(s)	Pros	Cons

Operational Procedure	Ordering by phone, internet	Convenience for patients, caregivers	Identity verification more difficult
	Verifying identity, age, intoxication, database registration	Enhances public safety	Challenging to effectively train staff and monitor operations
	Travel route limits	Aids enforcement	Provider constraints
Privacy	Retailer-created customer code	Manifest without patient's full name boosts privacy	Another procedural step required of retailer
Delivery locations	Permanent residence, no transient addresses	Enhances public safety	May reduce access for some patients
Customer eligibility	Database registration by authorized medical marijuana patients	Facilitates monitoring, conforms to legislative direction	Bars delivery for customers unwilling to register in database
Taxation	No change from current law	Simpler to administer for agency, retailers	Limits appeal, financial viability of program
	Exempt excise tax on medically compliant product	Enhances appeal of program to patients, may boost database registrations	Reduces state revenue, makes system more complex for retailers
Fees	Retailer sets fees without constraint	Flexibility may induce more providers to offer service	Could make access less affordable for patients
	\$10 or per-mile limit on delivery fee	Enhances affordability for patients	May limit availability of service, for retailers trying to cover costs

VII. Options and Recommendations

If policymakers wish to allow home delivery of marijuana to medical marijuana patients, the WSLCB would recommend the second option outlined in this report. There are requests the WSLCB would have in proceeding down this path, to the extent state policymakers choose to do so. Foremost among those is the agency requests that it be delegated substantial flexibility through the rule making process to design program details. Flexibility to develop program details in rule will enable to agency to collaboratively engage the industry, patients and other stakeholders as well as allow additional time for deliberative decision-making. A strong reliance on rule making will enable the process to adjust and adapt to the dynamic policy and legal environment surrounding marijuana.

A. No change

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

There is a plausible rationale for this “no action” or status quo alternative. No change to the system generally offers a simpler and easier path to administration of and oversight to the program. It avoids imposition of new costs, both upon the agency and the industry, particularly retailers. It avoids creation of new situations that present certain enforcement complexities (e.g., a mobile setting, new locations, transactions carried out with less monitoring, etc.).

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

B. Authorize home delivery by extending oversight to mobile setting with adaptations of current system

This option envisions allowing home delivery of medical marijuana to authorized patients within an oversight framework that would have to be adapted somewhat from the current system to address the circumstances of a mobile setting. It is the approach that would be recommended by the WSLCB if the state chooses to move in this policy direction.

Without committing at this time to a long series of program design decisions that would be best addressed in the rule making process, the WSLCB can suggest the type of approach it would likely propose by using a number of examples from the “Delivery Program Design Issues” table provided above on pages 20-22.

- Authorized patients and caregivers should be able to receive DOH-compliant or recreational products through the delivery system.
- The traceability system and delivery manifests are used for current transportation needs. Adapting these tools for delivery would likely provide sufficient tools for oversight and verifying compliance.
- At least one paid employee of a licensed marijuana retail store would provide the service.
- Vehicles should be registered with WSLCB and be equipped with a locked box, GPS device, and a means of communication.
- Cash and product carrying limits, detailed protocols for verifying customer identity, age, eligibility, etc., and driver training requirements would be spelled out in rules.
- Customers sign to take delivery at the door, with receipt documenting details of the transaction.
- Amount of product that could be provided to patients per delivery to be determined in rule.
- Requirements for opaqueness of packaging
- Service confined to hours permitting drivers to complete deliveries and return to retail shops before closing time
- Many of the requirements currently imposed on transportation licensees would likely be reviewed and considered for adaptation and/or extension to the home delivery system⁹

In addition to carefully considering requirements such as those listed above, the WSLCB would also consider new enforcement strategies to maximize public safety and minimize risks as much as feasible. Recording devices used by delivery personnel are one such example. This would be an example of costs of a delivery system that would be borne by private businesses. There would also be costs for the WSLCB to extend the umbrella of oversight and enforcement to this new realm of activity. Those state costs are not known at this time.

Note that the first bullet point on the list above suggests patients could receive deliveries of recreational products as well as medically compliant products. While this step goes beyond the directive in the legislative proviso for this study, the idea is put forward here based on concerns about financial viability of the system. It is assumed that many medical marijuana patients are currently being served through the recreational market. If the delivery system is limited both to authorized patients and to medically compliant products, the scope of the system would amount to a small fraction of products used by a small fraction of the consumers. This would seem to severely limit the chances of creating a financially viable opportunity for retail licensees to provide this service to patients.

This option would bring state policy in alignment with the general principle that patients should have access to medicines that may contribute to their well-being. It removes a barrier from current law for medical marijuana patients who have limited mobility and social supports in terms of caregivers, family or friends available and willing to help obtain and deliver product.

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

As a point of reference to convey a general sense of potential costs, the fiscal note for House Bill 2574 in the 2018 session, which would have authorized home delivery, projected costs of about \$770,000 in the first year and \$575,000 over the ensuing biennium.¹⁰ A revised estimate would be necessary to reflect any new proposed legislation. And, even then, administrative details would not be known yet, and would impact costs in unknown ways. Accordingly, the cost figures reported here should not be relied upon or overemphasized. In addition, HB 2574 also envisioned a fee being set for a medical marijuana delivery endorsement to cover expected costs of administering the endorsement. So it's worth keeping in mind that some or all of these costs might be borne by industry or customers. It is also not clear what impact such a fee might have on retailers' willingness to participate in a delivery program.

There are concerns about the safety of drivers, the risk of theft of marijuana and cash, youth access, and various risks that would be associated with any home delivery system. There may be challenges surrounding retailer participation; many may choose not to participate to avoid associated costs. There will also be oversight issues that are not unique to home delivery, but those general risks are slightly greater if home delivery is allowed.

C. Provide incentives

The agency recognizes, as many stakeholders persuasively argue, that creating a viable mechanism for home delivery of marijuana to authorized medical marijuana patients will probably not be enough to ensure patients will actually have access to home delivery service. If policymakers wish to consider additional steps to increase the likelihood that a functioning and effective system is available to patients, some additional policy options advanced by stakeholders could be explored. These ideas reflect incentives that might encourage businesses to offer delivery service when they might not otherwise choose to do so.

If bold departures from current law turn out to be necessary to create incentives that are strong enough to stimulate a robust market response, a range of options could be explored. A comprehensive set of such incentivizing components is not offered in this report. But some ideas offered by stakeholders are set forth below to illustrate the types of directions that could be considered. Examples are for purposes of illustration and to convey requests by advocates.

- Exempt medically-compliant marijuana products that are delivered to the homes of patients or caregivers from not just the sales tax but also the excise tax.
- Exempt all marijuana products delivered to patients or caregivers in their homes from both sales and excise taxes.
- Authorize delivery of cannabis products to recreational users, not just authorized medical patients, to expand the potential market.
- Allow third parties, not just licensed retailers, to provide delivery service. There are companies that provide cannabis delivery service in other states.
- One stakeholder suggestion was that the opportunity to provide delivery service might be one way for licensees located in jurisdictions with bans or moratoria to get involved in the industry.

A system that also adds in some of these incentives might both make the delivery system more effective and at the same time be somewhat disruptive for the rest of the regulated cannabis industry and create equity concerns. For example, if medical product delivered to the home were exempted from the excise tax, patients might argue the excise tax should be lifted from products obtained directly at retail stores. Consideration of a state tax exemption may stimulate demands from advocates and the industry for additional tax exemptions.

Conclusions

The WSLCB would recommend the second option outlined in this report if policymakers wish to authorize some form of home delivery. Under that approach, the agency believes home delivery for medical marijuana patients could be offered under acceptable provisions of monitoring and oversight. The WSLCB looks forward to working with policymakers, law enforcement, stakeholders, patients, and advocates in structuring a system of home delivery of medical cannabis, should that be the decision of the Legislature and the Governor.

It should also be reiterated that other steps, beyond home delivery, may be advisable to truly serve and meet the needs of medical marijuana patients. These include such steps as encouraging expanded production of medically-compliant product. It may also include expanded pesticide and heavy metal testing for non-medical marijuana products, thus reducing the production cost differential between medical and recreational products. In fact, the WSLCB has initiated rule making project to consider additional testing of recreational products. While not the focus of this report, addressing the issue of medical marijuana patient needs may require consideration of a variety of other actions, in conjunction with home delivery, to achieve desired results.

VIII. Appendices

Appendix A: About this Report

Methods

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

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

Research on Medication Delivery

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

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

Citations

1. Memorandum for All United States Attorneys: Guidance Regarding Federal Marijuana Enforcement, Office of the Deputy Attorney General (August 29, 2013).
2. Sznitman, Sharon. Do recreational cannabis users, unlicensed and licensed medical cannabis users form distinct groups? *International Journal of Drug Policy*. 2017. V. 42 (15-21).
3. "The Many Benefits of Illegal Weed Delivery," by Meagan Angus, The Seattle Weekly, May 3, 2017
4. Title 16, California Code of Regulations, Division 42 – BCC, Bureau of Cannabis Control, Sec. 5414-542)
5. Nevada Administrative Code – NAC Chapter 453A Sec. 150-153
6. See New York state regulations, Title 10 NYCRR Section 1004.21(c)
7. See Massachusetts state regulations for the Department of Public Health, 105 CMR 725.105(F) and 110(E)
8. See New Mexico state regulations of the Department of Health, Medical Cannabis Program, Chapter 34, Part 4, Section 7.34.4.1-17
9. See Washington Administrative Code 314-55-310
10. The fiscal note for House Bill 2574 is available at:
<https://fortress.wa.gov/FNSPublicSearch/GetPDF?packageID=49385>
11. Penn, M. Paterson, J., Fernandes, A., Horn, K. Patient Satisfaction with Home Delivery Service for Antiretroviral Medication. *Sexually Transmitted Infections*. 2015; 91 (75).
12. Castelino, S., Hurley, L., Malawasi, T., Osborne, A., Offering a home delivery service for HIV medication can increase patient choice. *Pharmacy in Practice*. 2009 (35-39).

Appendix B: Marijuana Enforcement Priorities

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

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

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

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

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

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

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

Memorandum for All United States Attorneys

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

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

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

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

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

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

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

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

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

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

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Subject: Guidance Regarding Marijuana Enforcement

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

cc: Mythili Raman
Acting Assistant Attorney General, Criminal Division

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

Michele M. Leonhart
Administrator
Drug Enforcement Administration

H. Marshall Jarrett
Director
Executive Office for United States Attorneys

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

Appendix C: Legislative Mandate

Home Delivery Study Charge – ESSB 6032, Section 140

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

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

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

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

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

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

(iv) Methods of ordering and payment;

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

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

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

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

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

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