



Early Lessons from Legalized Marijuana

An Analysis of Colorado's Policy Decisions



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Acknowledgments

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Introduction

Colorado is in the vanguard of an important public health policy shift.

Colorado is one of two states with legalized retail marijuana use for adults, and the only state with up-and-running stores. Leaders and policymakers, faced with little more than a year between voter approval and the retail launch date, scrambled to meet an aggressive time frame to create the regulatory structure for the nation's first legal marijuana marketplace.

Rarely do policymakers confront the task of creating new public policy from the ground up. State leaders across Colorado – from the governor's office to the Department of Revenue to the Colorado Department of Public Health and Environment – teamed with private and academic partners to prepare for the January 1 opening of retail stores.

Colorado's policy work can be placed into four categories:

- Regulating the marketplace;
- Controlling access to marijuana by those under 21;
- Setting tax rates and targeting the revenue;
- Creating a structure for research and learning.

Decisions ranged across a broad continuum, addressing issues as disparate as product packaging, security requirements and evaluating the potential health impact. Engaging local decision makers was particularly important for Colorado.

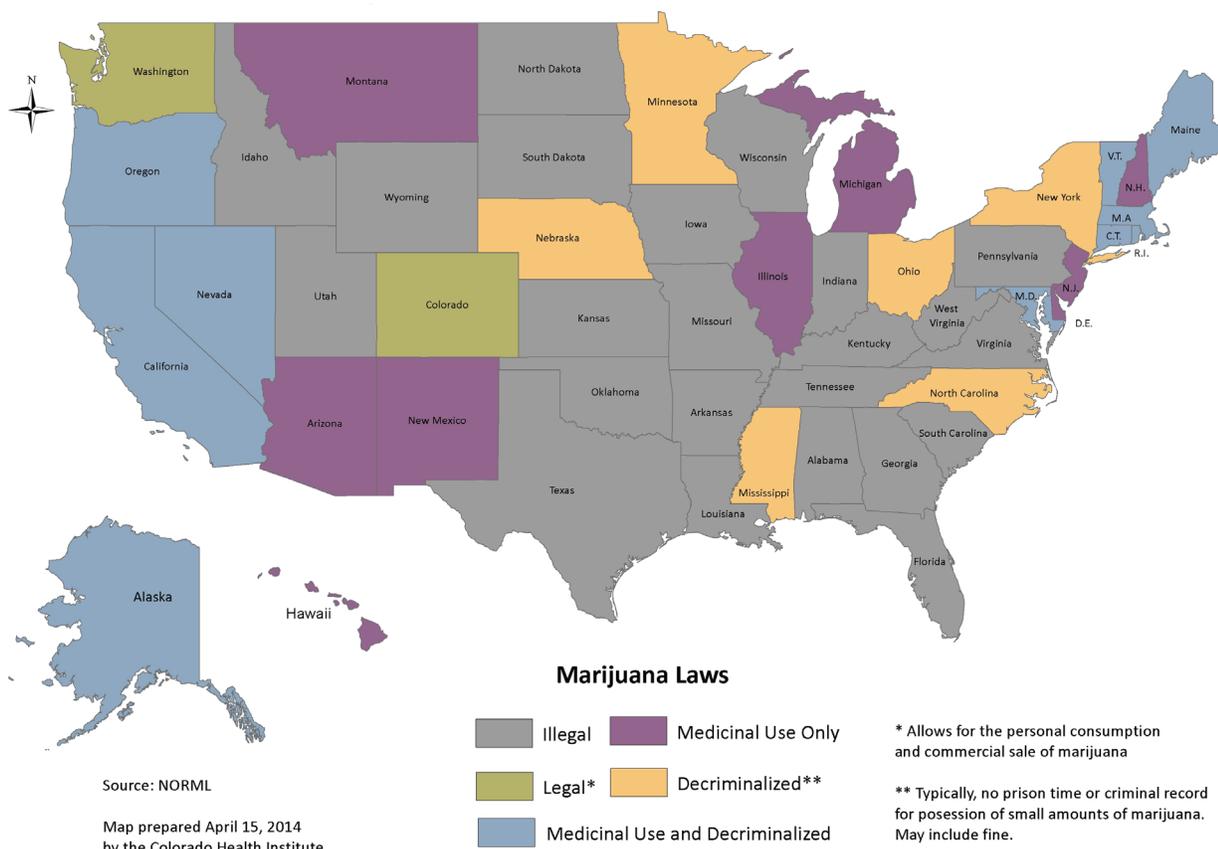
Amendment 64

Colorado voters amended the state's constitution to legalize marijuana on November 6, 2012. Amendment 64 allows:

- Residents ages 21 and over to possess, use, grow and transfer one ounce of marijuana or less.
- Residents ages 21 and over to grow up to six marijuana plants for personal use in a locked space.
- Non-Colorado residents to purchase no more than one-quarter ounce.

Retail stores may not collect or record personal information about consumers. The first \$40 million in revenues from an excise tax must be dedicated to school construction. Finally, the amendment includes details on state and local regulatory responsibilities.

Map1: Marijuana Laws in the United States, 2014



At the same time, the state is grappling with how to enforce the new regulations to ensure public safety.

Allocating tax revenues has emerged as one of the toughest issues, with different ideas about how the money should be spent as decision makers try to read the tea leaves from the early months of sales.

Colorado's efforts – both in creating marijuana policy and implementing it – are being closely watched across the nation. Today, more than half the states are considering some change in their laws, either decriminalizing marijuana or legalizing it for medical or recreational use.¹

Both proponents and opponents of legalized marijuana are waiting to see how the rollout

proceeds here. The public policy actions taken by Colorado will be scrutinized by leaders in other states. Colorado's experiences in these early days of legalized marijuana offer early lessons.

There are many ways to look at the implications of Colorado's decisions. What will be the impact on individual and public health? How does legalization change the norms and expectations of use around a previously illegal substance? What does it mean for youth?

In this brief, the Colorado Health Institute analyzes key policy decisions made so far in Colorado, highlights important issues yet to be addressed and the questions still facing decision makers, and focuses on lessons that can be learned from this earliest adopter state.



POLICY AREA ONE

Regulating the Marketplace

Colorado achieved a relatively smooth retail marijuana rollout, largely because of the groundwork that went into managing its medical marijuana industry.²

Presently, only existing medical marijuana stores are eligible for retail licenses, a strategy ensuring that the first stores to offer retail sales have established infrastructures and experience selling marijuana. The state will expand its licensing on July 1, 2014, awarding retail licenses to new retailers as well as existing medical marijuana outlets. These new stores can begin operating October 1, 2014.³

The Colorado General Assembly passed a law in 2013 creating the regulatory framework for retail sales. The Department of Revenue's Marijuana Enforcement Division was given licensing and regulatory responsibility for both medical and retail marijuana.

Colorado established specific licensing requirements for retail stores based on recommendations from the Amendment 64 Implementation Task Force, expert working groups and public input.

The regulations address:

- Background checks to prohibit convicted felons from working in the retail marijuana industry;
- License fees;
- Store security;
- Product labeling and packaging;
- Retail marijuana advertising.

Approximately 189 retail stores had received a state license as of April 1, with most located in Denver.⁴ But stores must also gain approval from their local governments, so there are probably fewer actually selling marijuana. Colorado had collected taxes from 83 retail marijuana businesses by the end of February, a number expected to rise.⁵

Federal-State Alignment

Marijuana remains illegal under the federal Controlled Substance Act. But the U.S. Department of Justice has said the federal government will not intervene in Colorado's retail marijuana industry, provided that Colorado successfully implements "strong and effective regulatory and enforcement" systems. Those systems should protect against a variety of federal concerns, including increased access by youth, out-of-state trafficking of marijuana, drugged driving and a more robust underground marijuana market.⁷ Colorado has adopted regulations to address these concerns.

Washington, the only other state with legalized retail marijuana, has opted to limit the number of licenses, while Colorado has chosen to let the market dictate the number of stores.⁶ Washington is not expected to have open retail stores until later this year.

Local governments across Colorado have adopted ordinances or regulations around business hours, retail locations and limits on the number of shops.

Cities can impose additional operating fees, sales taxes or excise taxes and issue other guidelines. Denver, for example, won't issue retail licenses to outlets other than established medical marijuana shops until 2016.⁸ Meanwhile, about 90 cities or towns have completely prohibited marijuana establishments, 30 have imposed further regulations or rules and 21 have established moratoriums to give themselves more time to decide.⁹

Colorado voters continue to weigh in on retail marijuana. Voters in 19 of 19 municipalities have approved ballot questions to impose extra taxes or fees on retail marijuana.^{10, 11}

UNRESOLVED ISSUES:**A CHI Analysis**

Colorado's medical marijuana industry provided a practical template for regulating retail marijuana, one that industry proponents have embraced.

But an issue that has not been addressed is how these now-legal businesses conduct financial transactions. Marijuana businesses operate primarily as cash-only, raising security concerns and increasing the potential for crime and theft. Banks are reluctant to offer banking services due to a fear of federal prosecution, despite recent federal assurances.¹² Colorado's two largest banks have said they will not refinance or make commercial loans on

properties that lease to marijuana businesses.¹³

Limited access to stable financing may compromise the security and sustainability of Colorado's legal marijuana industry. U.S. Representative Ed Perlmutter of Colorado has introduced legislation to allow banks to do business with marijuana retailers and other marijuana-related businesses in states with legal marijuana. The bill, introduced in 2013, remains stalled in House committees and has not been scheduled for hearings. The Colorado Banking Association contends that the only "real solution" to this issue is Congressional action.¹⁴

**Local Decisions**

Marijuana is legal to consume in all areas of the state, but localities are able to govern the industry as they see fit.

- **Allow**

Denver, the state's capital and largest city, is allowing retail marijuana stores, as are Boulder and Fort Collins, two other large cities along Colorado's Front Range. Some of Colorado's mountain resort towns, including Aspen, Breckenridge and Steamboat Springs, have decided to allow retail stores as well. Denver accounts for the majority of stores currently open in Colorado.

- **Moratorium**

Cities may choose to bar the licensure of establishments until a later date. Aurora, Colorado's third largest city and close neighbor to Denver, is currently under a moratorium until

May 2014. Though Aurora residents cannot buy marijuana within city limits, they can travel to Denver to do so. Snowmass Village, a ski resort area, has also chosen to wait.

- **Prohibition**

Colorado Springs, Colorado's second most populous city, is one of the approximately 90 municipalities that has opted to prohibit marijuana establishments altogether, and is joined by other larger cities such as Grand Junction, Greeley and Longmont. Most smaller cities scattered throughout the state lean toward prohibition. Tourist-heavy Estes Park, home to Rocky Mountain National Park, has decided upon prohibition.



POLICY AREA TWO

Limiting Youth Access to Marijuana

A guiding principle behind Colorado's regulation of retail marijuana is to prevent young people under the age of 21 from using it.¹⁵

Efforts to restrict youth exposure to marijuana look similar to those intended to keep tobacco and alcohol off limits. Strict packaging requirements are designed to help prevent young children from accidentally consuming edible marijuana candies or cookies. School buffer zones and advertising restrictions aim to keep marijuana out of sight.

Retail marijuana stores must check the identification of each person seeking to enter. But retail marijuana is restricted to adults ages 21 and over, while medical marijuana is available to those 18 and over. This means that Colorado has two regulatory options for shops with licenses for both medical and retail marijuana. The shops can either keep the sections physically separate or they can restrict all of their sales – even medical marijuana – to customers who are at least 21.¹⁶

The packaging rules aimed at limiting access to youth are based on recommendations from the expert workgroup and a health impact assessment conducted by the Colorado School of Public Health and Children's Hospital Colorado.

Packages for both retail and medical marijuana must be:

- Opaque rather than see-through;
- Resealable if intended for multiple uses;
- Child-resistant;
- Labeled with these words: "This product is intended for use by adults 21 years and older. Keep out of the reach of children."

Existing prohibitions on the use of tobacco products on school property were supplemented to include retail marijuana products. Like liquor stores, retail marijuana

stores can be restricted in their proximity to schools and child care facilities. For example, the city of Denver bans stores located within 1,000 feet of schools and child care facilities.¹⁷

Marijuana advertising is also regulated. Almost all forms of advertising, including television, radio, print, Internet and event sponsorship, must have "reliable evidence" that no more than 30 percent of the audience is under 21.¹⁸

UNRESOLVED ISSUES:

A CHI Analysis

Colorado has enacted policies and adopted regulations to keep marijuana away from youth.

But just as young adults have avenues for obtaining alcohol and cigarettes, marijuana may also remain within their reach, even with these policies. Between 50 percent and 75 percent of Denver adolescents in substance use treatment programs had used someone else's medical marijuana at least once.^{19,20} And a Colorado hospital treated 14 children who had ingested marijuana between October 2009 and December 2011 compared with none between 2005 and September 2009, according to a 2013 study.²¹ Medical marijuana began to be regulated in Colorado in 2010.

How strongly Colorado enforces penalties for selling to children or targeting minors with advertising will be a key component in limiting access. The possible penalties include suspending or revoking licenses or fines of up to \$100,000.²² It's too soon to know whether these efforts will work or whether different policies are needed.



POLICY AREA THREE

Setting Tax Rates and Targeting the Revenue

The potential for public revenue from regulated retail marijuana sales was a primary selling point for Amendment 64's approval by voters.

Revenues will come from a number of sources. Colorado voters in 2013 passed a measure imposing excise taxes on wholesale marijuana transactions up to 15 percent. They also approved a 10 percent statewide sales tax on retail marijuana in addition to the state's 2.9 percent sales tax for all other goods (see graphic on Page 10).

Local governments have established additional sales taxes and excise taxes. Most that have imposed an extra sales tax have settled at five percent, but Denver decided on 3.5 percent. Local excise taxes range from five percent to 15 percent.²³ Municipalities determine how to allocate revenues collected through local taxes.

The first \$40 million in state excise taxes collected annually must fund capital projects in public schools. Fifteen percent of the state sales tax revenue will go to towns that allow retail marijuana sales, allocated in proportion to the total retail sales in each city. This means that cities with the highest sales will receive more revenue.

Legislation is being considered that would direct state licensing fees to the Marijuana Cash Fund to support enforcement and regulation of dispensaries. The remaining tax revenues would go to a newly created Marijuana Tax Fund for the General Assembly to allocate.

It's not clear how much revenue retail marijuana will generate.

State sales and excise tax revenues from retail sales in January, the first month of legalization, totaled almost \$2 million.²⁴ State sales tax revenues in February largely mirrored January's take, with modest growth in retail marijuana sales. Sales tax revenues on February sales were above state projections while excise tax revenues were less than half of what was expected.^{25, 26}

In 2013, the Colorado Legislative Council initially projected \$67 million in revenues for Fiscal Year (FY) 2014-15. In the wake of January sales figures, the Department of Revenue projected annual revenues of \$107 million. If FY 2014-15 marijuana revenues exceed the projected \$67 million, taxpayers may be eligible to receive refunds under the Taxpayer's Bill of Rights (TABOR) amendment. Lawmakers have options for avoiding this, including statutory changes to the excise and sales taxes or a November ballot issue seeking to keep the additional marijuana revenue.²⁷

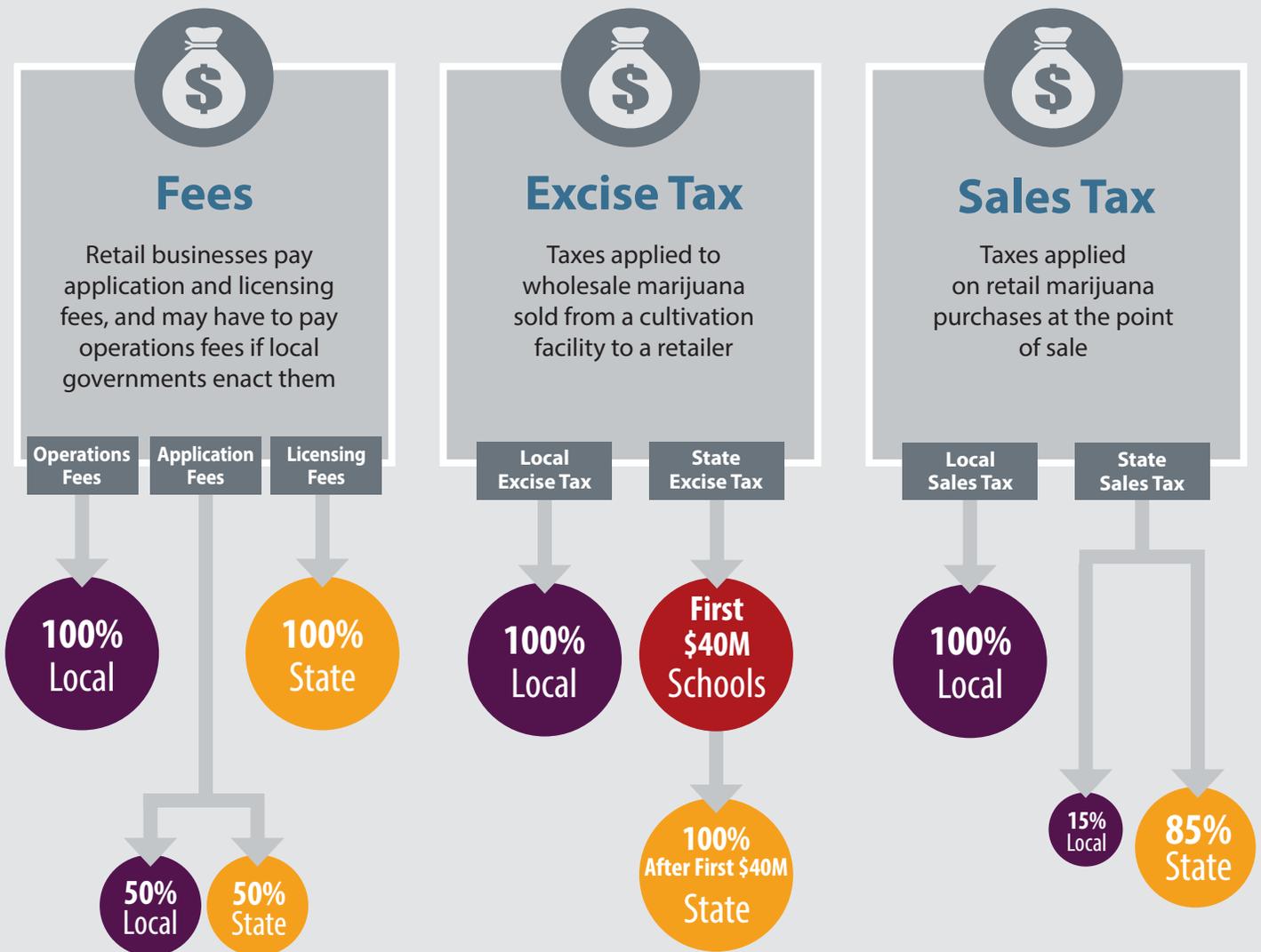
Even less clear is how marijuana revenue will, or should, be spent. The Colorado Legislature, working in the final weeks of the session, is making decisions now.

Allocating marijuana revenues may prove contentious. Colorado Gov. John Hickenlooper proposed limiting the spending to programs with direct or indirect relationships to marijuana use, including prevention of marijuana use, an impaired driving awareness campaign and enhanced substance use disorder benefits in Medicaid.

Both marijuana advocates and treatment providers support approaches that fund broader

Where the Money Comes From and Where it Goes

Retail marijuana revenues come from fees and taxes paid by marijuana establishments and consumers. Cities that allow retail sales may enact additional taxes or fees and keep that money. Most state tax revenues will be allocated by the General Assembly.



treatment and prevention efforts. The state's bipartisan budget-setting committee analysis of the governor's proposal questioned many of its assumptions about the impact of retail marijuana on specific programs.

The governor's plan would spend approximately \$54 million in marijuana revenue in FY 14-15, a request that was scaled back following the release of February revenues. The current state budget for FY 14-15, which has yet to be approved by the governor, does not include any marijuana revenues.

Colorado's budget-setting committee is set to introduce a separate bill to establish a Marijuana Tax Fund and determine how to allocate approximately \$25 million proposed for FY 14-15. Spending will be directed to drug education and prevention for youth, a marijuana public education campaign, training for law enforcement and funds for school health professionals to provide substance abuse prevention and early intervention services.²⁸

The committee is proposing to annually delay spending by a year so spending is aligned with collected revenues.

UNRESOLVED ISSUES:

A CHI Analysis

Marijuana will bring new tax revenues to Colorado. Schools will see new funding for capital construction. But how should Colorado spend the rest?

Colorado legislators have prioritized youth in its proposed spending decisions, allocating over 70 percent of anticipated FY 14-15 marijuana revenue spending to youth and school-related efforts. Prevention programs appear to go beyond marijuana, and address the multiple drug and alcohol-related influences on substance abuse.

Has Colorado found the "sweet spot" for taxing retail marijuana, high enough to prevent and discourage youth from using, while generating adequate resources? Or are state and local taxes so high that consumers will turn to the illegal, and untaxed, market?

Finally, it's important to remember that marijuana tax revenues are a small fraction of the total budget. They may make a dent in some problem areas, but most likely won't fund huge initiatives.



POLICY AREA FOUR

Creating a Structure for Research and Learning

Colorado is monitoring the prevalence and patterns of marijuana use and conducting surveillance and research to understand its health risks.

Questions on marijuana use have been added to statewide surveillance surveys of pregnant women, children and adults, including the Pregnancy Risk Assessment Monitoring System, Child Health Survey and the Behavioral Risk Factor Surveillance Survey. These data, paired with existing surveillance data, can provide insights on how retail marijuana influences use of other substances such as alcohol or illegal drugs.²⁹

The Colorado Department of Public Health and Environment (CDPHE) is monitoring changes in drug use patterns and health effects of retail marijuana use. CDPHE will convene an advisory group to develop strategies around prevention, targeting which health conditions to study, assessing health effects and establishing surveillance.

Driving under the influence of marijuana, like alcohol, is a public health concern that Colorado has addressed. Driving under the influence of marijuana remains illegal. Legislators have passed laws to increase education about impaired driving as well as establish a blood limit of five nanograms per milliliter (5ng/mL) of blood for driving under the influence of marijuana.³⁰ How this level affects a person will depend on how it was ingested and a person's ability to metabolize it, among other variables.

Marijuana can remain in the blood stream for extended periods, unlike alcohol. So it is unclear whether this level actually equates to active intoxication and impairs driving ability. Observers expect it is a question that may find its way to the courts. Monitoring accidents associated with drivers below 5ng/mL will help to determine whether this level is adequate to protect public health and safety.

Limiting exposure to secondhand marijuana smoke can also minimize public health risks. A state law passed in 2013 restricts the public use of marijuana and adds marijuana provisions to the state's Clean Indoor Air Act. Private institutions such as hotels and rental apartments can determine whether to allow marijuana use on their grounds.

While it is legal to consume marijuana on private property, Colorado municipalities are debating whether private porches are considered public spaces. Some city councils have attempted to ban marijuana consumption on places such as porches, where the activity could be seen or smelled. Most of these attempts have failed.³¹

UNRESOLVED ISSUES:

A CHI Analysis

Colorado is tackling issues concerning the public's health by monitoring marijuana use, placing limits on drugged driving and keeping public spaces smoke-free.

How marijuana sales impact crime and public safety – other important public health concerns – is still unknown. However, these issues have not materialized in the first three months of sales. Denver, where most retail outlets are located, has not seen widespread increases in crime, with overall property crime decreasing compared with the same time period in 2013.³²

While data are limited and cannot be considered a trend, continued monitoring will yield important insights that are likely to drive future policy decisions.



Lessons Learned

Policymakers thinking about how to regulate marijuana in their states can look to Colorado's early experiences. Some of the lessons learned so far include:

- The regulatory framework for medical marijuana can provide an important glide path for regulating retail businesses, essentially using old approaches to guide a new marketplace.
- Engaging a broad network of stakeholders across state and local government, industry, business and academia to develop policy recommendations builds support for making difficult decisions.
- Keeping marijuana away from children through a robust regulatory and enforcement environment is a critical state and federal priority.
- Sharing regulatory responsibilities at the local level can help citizens feel empowered in a changing environment.
- Deciding how to spend marijuana tax revenue is an enticing, yet challenging, exercise. It may take several years for trends to develop that help policymakers understand how much revenue can be realized from this new market.

Key Legislation

- **House Bill 13-1317:** Created the regulatory framework for retail marijuana.
 - **Senate Bill 13-283:** Implemented measures concerning public health, established the Marijuana Cash Fund and detailed regulatory responsibilities.
 - **House Bill 13-1318:** Called for voter approval of marijuana excise and sales taxes.
 - **House Bill 13-1325:** Set the legal limit for driving under the influence of marijuana at 5 nanograms per milliliter of blood.
 - **House Bill 14-1122:** Marijuana packaging requirements.
- Legalizing marijuana creates opportunities to research and better understand the individual and public health impacts of use, especially since public sentiment has preceded public health knowledge.
 - The time and resource burdens on both the legislative and executive branches are substantial.



Conclusion

Colorado's experience with retail marijuana sales provide early lessons about the policy decisions needed to support and regulate this new industry.

Still, there are more questions than answers on the long-term implications of this historic action. And it's a moving target.

Decisions are being made in Colorado – in the General Assembly, at the ballot box and in homes across the state – that will shape the overall impact of this new policy.

The Colorado Health Institute will closely monitor the public policy decisions that Colorado has made, analyzing which have been sound and which aren't working as intended.



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