



Legal Marijuana Coming Into Focus

An Analysis of Colorado's Policy Landscape

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On the Cover

A mature marijuana plant is ready for harvesting at Colorado Harvest Company in Denver. BRIAN CLARK/CHI

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Introduction

Crime waves. An epidemic of overdoses. Skyrocketing drug use among kids. A tax windfall for schools. These were the predictions when Colorado became the first state to legalize retail marijuana sales on January 1, 2014.

Instead, more than a year later, the most pressing issues are how to label edible marijuana products, how to deal with unpredictable tax revenues and how the state's marijuana merchants can safely bank their money.

The size and scope of Colorado's marijuana market is beginning to come into focus in this second year of legalization.

Over-the-counter marijuana is generally confined to Denver, the northern Front Range and the mountain resort towns. Most other cities and counties across Colorado have opted not to allow retail sales. Partly as a result of these widespread local prohibitions, the promised tax windfall for schools has not happened to the degree expected.

An estimated 485,000 of Colorado's adult residents – about 13 percent – consume marijuana at least once a month. That's enough people to fill Coors Field 10 times. And an estimated 149,000 toked up nearly every day. These heavy users account for more than two-thirds of all marijuana consumed in Colorado, according to one recent study.¹

Overall, adult marijuana use is higher in Colorado than in most other states, but there is no data yet on whether use has climbed since legalization. Health surveys due later this year could help answer whether legalization leads to more people using marijuana.

What's still hazy, though, is the effect all this pot is having on Colorado's health. Public health experts have more questions than answers so



BRIAN CLARK/CHI

A sign at Colorado Harvest Company in Denver explains legal purchase limits for Colorado residents and out-of-staters.

far. Will more youth start using marijuana? What are the health consequences of using marijuana, including for patients using it for medical reasons? And how does yesterday's research explain the health impacts of today's more powerful marijuana?

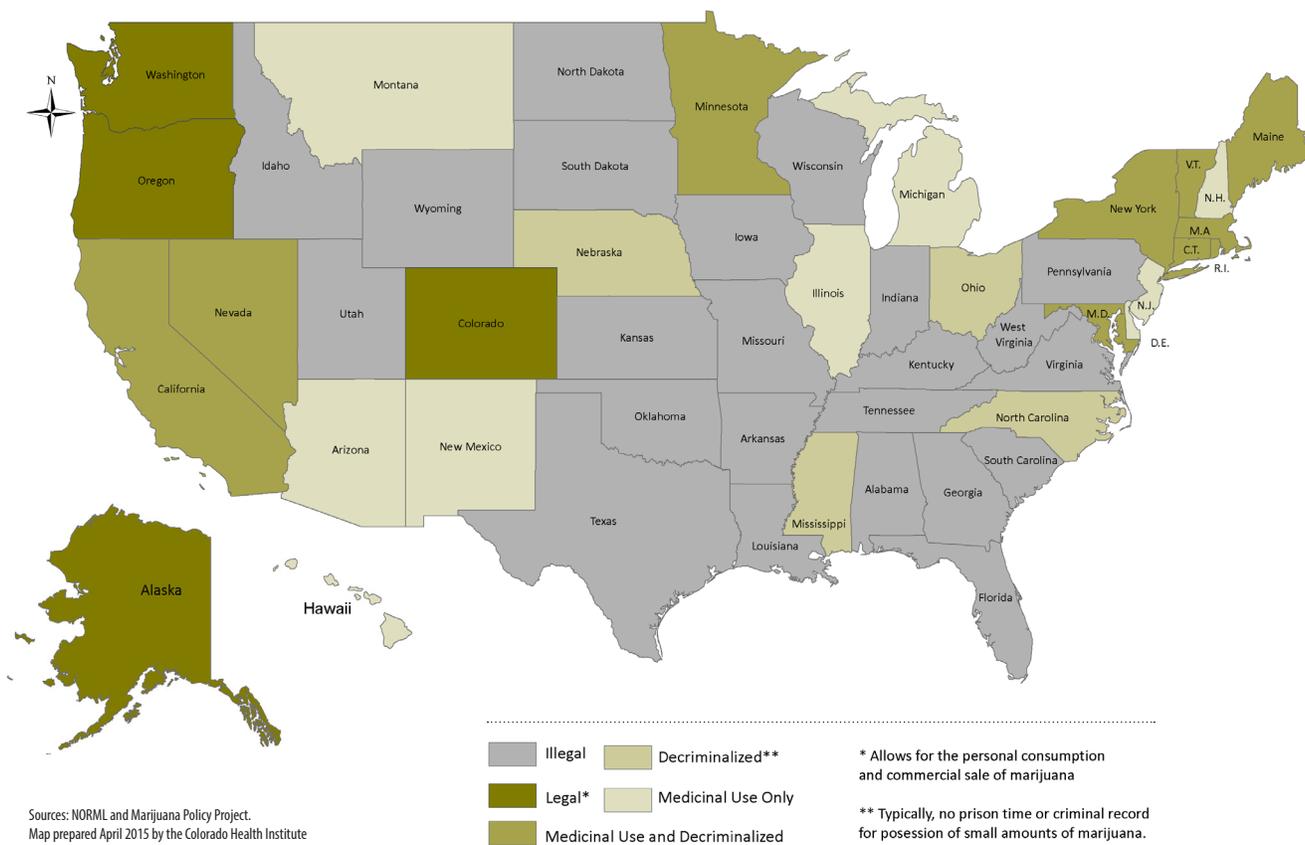
Colorado was the first state to allow legal retail sales of marijuana for non-medical purposes. As other states and countries consider legalization, they are looking to Colorado for advice.

The Colorado Health Institute has analyzed the evolving marijuana policy landscape and identified these six lessons from Colorado.

1. "Seed to Sale" Regulation Works, But Only When It's Used

The careful tracking of marijuana from growers to retailers is intended to make sure pot is kept

Map 1: Marijuana Laws in the United States, 2015



out of the hands of minors and black market drug dealers. For the most part, the system works, but not all marijuana is regulated in this way. And there is no “sale to smoke” system to track pot after it leaves a retail store.

2. Legalization Has Led To Neither Economic Boom Nor Economic Doom

Both supporters and detractors of legalization overstated its effects on Colorado’s economy.

3. Marijuana Revenue Is Not Rocky Mountain High

Tax revenue in the first year has lagged predictions. A number of factors, some unique to Colorado, have made it hard to accurately anticipate sales levels.

4. Bring In the Banks or Bank On Trouble

Threats of federal prosecution are keeping banks on the sideline, which has forced marijuana

businesses to deal in cash, increasing the risk of crime and making it harder to police them.

5. It’s Not Your Grandfather’s Marijuana

Today’s pot is much more potent, and it comes in new forms, such as edibles. Colorado failed to completely anticipate how much attention edibles would attract and how difficult it would be to regulate them.

6. We Know What We Don’t Know About Health

Colorado didn’t have much data on marijuana’s health impacts before voters legalized it, and public health knowledge is still scant.

This report builds on CHI’s 2014 brief analyzing Colorado’s initial efforts to regulate retail marijuana. An added year of experience has allowed us to identify Colorado’s successes and setbacks, informing the continuing public policy debate over legalizing marijuana.



A variety of edible marijuana products on display at Colorado Harvest Company in Denver. BRIAN CLARK/CHI

Colorado: First Out the Door

Colorado became the first state to allow retail sales of marijuana to adults on January 1, 2014. This historic event followed almost 30 years of legalization efforts at the state capitol and at the ballot box, culminating in Amendment 64 on the November 2012 election ballot.

Proponents ran a campaign that emphasized tax revenues for schools, closing the marijuana black market and touting pot as no worse than alcohol. Voters embraced these messages, and by a margin of 55 percent to 45 percent put Amendment 64 into the state constitution.

But Colorado was already well along the path to legalized marijuana by 2012. Voters had approved medical marijuana in 2000. Nine years later, hundreds of medical marijuana outlets were operating, thanks, in part, to the Obama administration's decision not to prosecute dispensaries in states with legalized medical marijuana.² Colorado's legislature passed the first medical marijuana regulations in 2009,

legitimizing the idea that marijuana could be sold over-the-counter in a regulated setting.

After all the lead-up, though, Colorado had little time to get ready for legal retail sales.

Amendment 64 required Colorado to have its rules for retail marijuana sales in place by July 2013 and the stores up and running six months later, giving the government less than a year to establish a regulatory framework for a brand new industry.

Colorado, with no blueprint, built much of its retail marijuana regulatory structure on its medical marijuana rules. This proved an efficient way to quickly set up a system, but the medical model has not always translated well to retail sales, especially when it comes to edible marijuana.

Colorado's pioneering regulators and policymakers have many hard-won lessons to share.

Marijuana in Colorado: By the Numbers

USERS

Heavy Hitters Using the Most

485,000

Coloradans use marijuana at least once a month. That's about **one of eight** residents.



149,000

of those monthly users, about one-third, are **heavy hitters**, using marijuana **daily**.



Those heavy hitters consume two-thirds (66.9 percent) of all marijuana in Colorado.

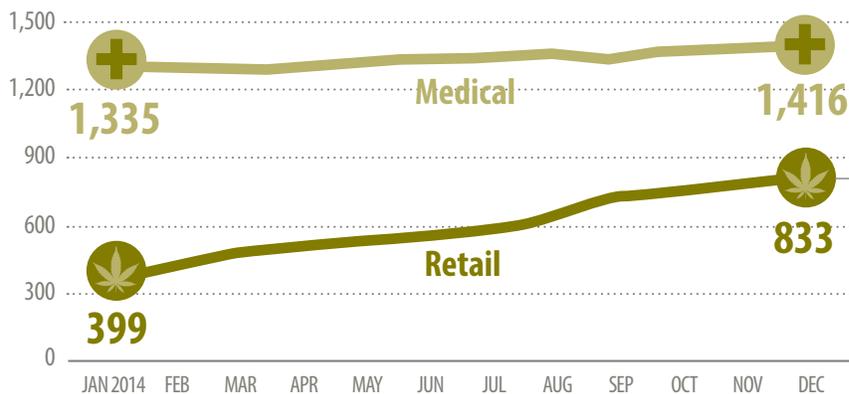
Tourist spot

44.5% of Denver retail sales were made to out-of-staters.



BUSINESSES

Retail Marijuana: Catching Up to Medical Licenses



Retail licenses at end of 2014

Retail Stores: **322**

Retail Cultivations: **397**

Product Manufacturers: **98**

Testing Facilities: **16**

16,000 people are licensed to work in the marijuana industry. For comparison, Colorado has **2.7 million** jobs.

GOVERNMENT

Tax Collections in 2014

Medical: 2.9% sales tax

\$10,886,966

Retail: 12.9% sales tax

\$39,186,917

For marijuana enforcement, drug use prevention, public health, local governments and associated expenses.

Retail: 15% wholesale excise tax

\$13,341,000

For school construction.

Colorado and Legal Marijuana: Six Lessons

LESSON ONE

"Seed to Sale" Regulation Works, But Only When It's Used

Colorado Gov. John Hickenlooper, who reluctantly accepted legal retail marijuana sales, has made it clear that he wants to keep marijuana out of the hands of people who should not have it — especially anyone under the age of 21.

To meet this goal, Colorado's regulatory system tracks retail marijuana from seed to sale. Each plant that sprouts at a licensed marijuana growing operation is assigned a radio frequency identification chip, which tracks the plant as it is harvested, processed and sold. Sales at retail shops are policed closely, backed by heavy fines for selling to anyone under 21.

This system is working. By and large, marijuana businesses are playing by the rules. And sellers are taking seriously their responsibility to not sell to minors. The Colorado Department of Revenue's Marijuana Enforcement Division — the primary regulatory agency for marijuana — has run 20 undercover sting operations to see whether retail stores will sell to minors. No store was cited for underage sales during 2014.³ The penalty is steep — up to a \$100,000 fine and suspension or revocation of a store's license.

However, it is still too early to say whether legalization has made it easier for kids or teens to obtain marijuana. Although the seed-to-sale system is robust, Colorado has no way to track marijuana from "sale to smoke." Just like alcohol and cigarettes, marijuana store customers might give or sell their legally obtained pot to kids, even though it is a crime to do so.

Before legalization, the rate of Colorado teens using marijuana was below the national



BRIAN CLARK/CHI



SUCCESS

Retail shops are taking seriously their responsibility to not sell to minors

average. About 37 percent of high school students reported ever having used marijuana in 2013, the most recent available survey data. That was seven points below the national average of 44 percent.⁴

Clearly, though, teenagers and even younger children were able to get marijuana illegally before Amendment 64, and they still can today. To complicate matters, medical marijuana is legal from age 18 with a medical card, which can be obtained with a doctor's recommendation.

Another concern is the amount of marijuana sold outside the seed-to-sale regulatory system. Large volumes of unregulated marijuana are still being sold in Colorado, which has the potential to "ruin the game," said Andrew Freedman, director of marijuana coordination for the office of the governor.⁵

Colorado has three basic markets for marijuana: a tightly regulated over-the-counter market for

retail and medical marijuana; a legal, informal market that includes medical caregivers and people who grow their own marijuana, where regulations are light or nonexistent; and the illegal black market.

This means that Coloradans have multiple options for obtaining marijuana legally (See Figure 1). They can buy it from a retail store, grow their own, or get it from a friend. If they have a medical card, they can buy it from a medical dispensary, get it from a caregiver or grow their own.

A 2014 study of Colorado's marijuana market estimated that 53 tons, or 40 percent, of the marijuana consumed by adult Coloradans came from outside the regulated structure — medical caregivers, people growing their own plants at home, people reselling legally obtained marijuana, or the illegal black market.⁶

Of these sources, caregivers are the focus of new legislation. Caregivers are authorized by Colorado's 2000 medical marijuana law to provide marijuana to patients with medical marijuana cards. They do not have to register with the state, and the marijuana they grow is not tracked in the seed-to-sale system.

Senate Bill 15-14 proposes to tighten the rules for medical caregivers. The legislation would require them to register with a state agency and the state medical marijuana licensing authority. The bill, still pending when this report was published, also calls for verifying the medical necessity of a caregiver's exemption from the usual limits on the number of plants they can grow.⁷



SETBACK

Nearly 40%

of the marijuana sold in Colorado remains beyond the reach of the regulatory system

Legal Ways to Get Marijuana

For Anyone Over 21

Over the counter at a retail store

- **Regulations:** All plants tracked from "seed to sale." Detailed labelling and packing requirements.
- **Taxes:** 15 percent excise, 10 percent state marijuana sales tax, 2.9 percent regular state sales tax, local sales and excise taxes.

Growing at home (residents only)

- **Regulations:** Grow up to 6 plants per person. Only three can be mature at one time. Cannot be sold.
- **Taxes:** None

For Colorado Residents with a Medical Marijuana Card

Over the counter at a medical marijuana center

- **Regulations:** All plants tracked from "seed to sale."
- **Taxes:** 2.9 percent state sales tax
- **Fees:** Medical card: \$15 annual fee

From a caregiver

- **Regulations:** Caregivers can sell marijuana to patients with a medical card. Plants are not tracked by regulators.
- **Taxes:** None

Growing at home

- **Regulations:** Grow up to 6 plants per person. Only three can be mature at one time. Cannot be sold.
- **Taxes:** None

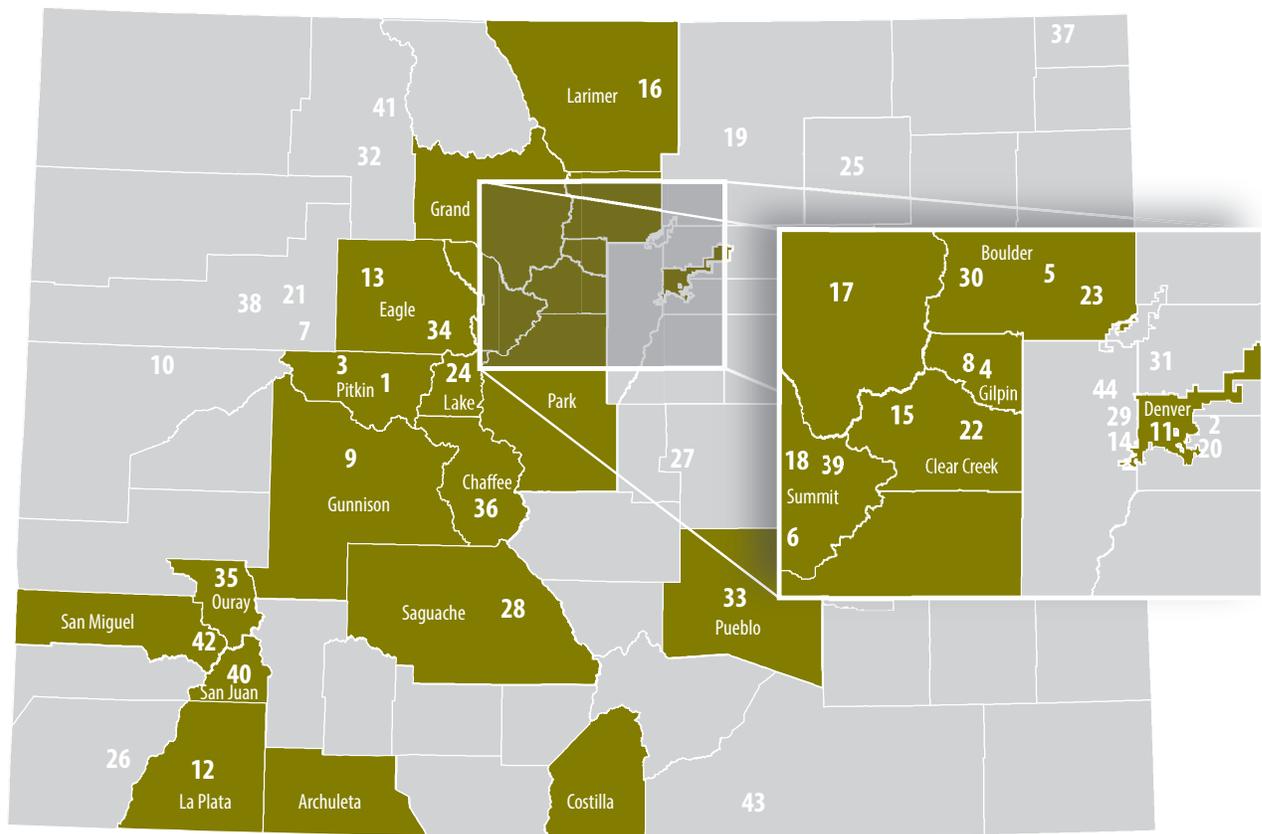
LESSON TWO

Legalization Has Led To Neither Economic Boom Nor Economic Doom

Neither side of the Amendment 64 campaign got their economic predictions right. Legalization did not damage the economy or make Colorado a pariah. It also cannot be credited with the state's economic recovery.

It's indisputable that the marijuana industry has created jobs. State records show that 16,000 people have obtained licenses to work in the industry.⁸ For perspective, that accounts for about half a percent of the 2.7 million jobs in Colorado.⁹ Freedman, the governor's marijuana coordinator, said marijuana generates only about one percent of economic activity in Denver, which has 41 percent of all the retail stores in the state, according to licensure data.

Map 2: Counties and Cities That Allow Retail Marijuana Sales as of December 2014



Counties that allow retail sales in unincorporated areas are highlighted in green.

Cities that allow retail sales are noted with a number.

- | | | | |
|----------------------------|----------------------|----------------------|-----------------------|
| 1. Aspen | 12. Durango | 23. Lafayette | 34. Red Cliff |
| 2. Aurora | 13. Eagle | 24. Leadville | 35. Ridgway |
| 3. Basalt | 14. Edgewater | 25. Log Lane Village | 36. Salida |
| 4. Black Hawk | 15. Empire | 26. Mancos | 37. Sedgwick |
| 5. Boulder | 16. Fort Collins | 27. Manitou Springs | 38. Silt |
| 6. Breckenridge | 17. Fraser | 28. Moffat | 39. Silverthorne |
| 7. Carbondale | 18. Frisco | 29. Mountain View | 40. Silverton |
| 8. Central City | 19. Garden City | 30. Nederland | 41. Steamboat Springs |
| 9. Crested Butte | 20. Glendale | 31. Northglenn | 42. Telluride |
| 10. Debuque | 21. Glenwood Springs | 32. Oak Creek | 43. Trinidad |
| 11. Denver (city & county) | 22. Idaho Springs | 33. Pueblo | 44. Wheat Ridge |

On the plus side, he notes that many jobs in the marijuana business have gone to people who had minimal employment prospects outside the industry, such as those with lower levels of education.

The effect on tourism is unquantified. Tales of marijuana tourism have been a media staple since legalization. Package tour companies are marketing to pot enthusiasts, as are postings on vacation rental-by-owner websites. But retail marijuana is mostly confined to Denver, the northern Front Range and the mountain resort towns — precisely the places that tourists were already visiting before Amendment 64 (See Map 2).

Colorado holds a unique spot as the first state to legalize retail sales. But the market is unpredictable. Tourists accounted for an estimated 90 percent of retail sales in mountain communities during the early months of 2014.¹⁰ As other states legalize, Colorado may eventually lose its position.

LESSON THREE

Marijuana Tax Revenue Is Not Rocky Mountain High

Tax revenue from retail marijuana sales has fallen well short of predictions.

Proponents of Amendment 64 overstated the potential for revenue. The amendment called for the first \$40 million in annual excise taxes to go to school construction and it gave legislators discretion to spend the rest. But excise taxes never got anywhere close to \$40 million in 2014. Instead, schools will see approximately \$13 million from 2014 sales.

Legislators in 2013 realized that wholesale excise taxes paid on sales from growers to sellers might not raise much revenue, so they proposed a special sales tax of 10 percent. Voters approved the plan, and now Colorado has two different marijuana taxes: a wholesale excise tax that funds schools and a state retail sales tax

TABOR Issues

Because of a previously overlooked passage in Colorado's Taxpayer's Bill of Rights (TABOR), the state will have to refund an anticipated \$58 million in marijuana-related revenue unless the legislature asks for and receives permission from voters to keep the money. This issue affects only FY 2014-15.

The obscure TABOR provision had never been invoked until voters approved marijuana taxes in 2013. It should not be confused with the more well-known TABOR limits that require tax refunds when government revenue grows past a certain point.

The TABOR provision at issue requires the state to include a revenue estimate for the whole government for the next year in the voter guide for any election with a tax increase on the ballot. If the tax increase passes and overall state revenue exceeds the amount published in the voter guide, the state must refund the tax — even though voters had approved it.

That's exactly what has happened. Because of an improving economy, revenues subject to TABOR exceeded the projected \$12.08 billion.

The legislature has set aside \$58 million for this refund, although legislators are proposing a ballot initiative to ask voters to let the state keep the money.

420 DEALS

ENJOY THESE CANNA-TASTIC SPECIALS
ALL WEEKEND



Quality Bud Starting at
\$20 per EIGHTH
\$105 per OUNCE

20% OFF
ALL Concentrates

25% OFF
YOU-CALL-IT
(Any One Regularly Priced Item)

MEMBERS:
Get ANY OZ for \$105
Get an EXTRA 10% OFF
(Regular Member Pricing)

VALID 4/17-4/20

SWEET
GRASS
Kitchen

SWEET
GRASS
Kitchen

that is used for marijuana-related health and law enforcement expenses.

Even with the added sales tax, though, the Department of Revenue overestimated the amount it would collect, predicting \$107 million from retail marijuana excise and special sales taxes in 2014.¹¹ Colorado, though, collected less than \$53 million in excise and sales taxes on retail marijuana in 2014.¹²

But legislators again were careful, and they planned ahead by not spending marijuana tax money until it had been collected. Ultimately, the legislature budgeted just \$23 million from marijuana taxes in fiscal year (FY) 2014-15.¹³

Here is why the revenue predictions were so wrong:

- The special sales tax applies to retail marijuana but not medical marijuana. It is fairly easy to get a doctor's recommendation for medical marijuana, and the card costs \$15 a year. Because of the higher tax rate on retail marijuana, many users found it cheaper to stay in the medical marijuana system.¹⁴
- Amendment 64 allows people to grow their own marijuana, which is not taxed. This policy decision by Colorado voters has led to lower tax collections than the state could have had. Washington state legalized marijuana the same time as Colorado, but it requires all marijuana to be sold in a retail setting, which allows for taxation.
- Growers were allowed a one-time, untaxed transfer of medical marijuana plants to the retail side of their business. This likely depressed the excise taxes available for school construction.
- Local jurisdictions either rejected or were slow to approve retail marijuana stores, keeping revenue down.
- Finally, Colorado leaders had no precedent to help them predict revenue from legalizing a product that had been confined to the black market.



SETBACK

Officials overestimated tax revenue from marijuana in the first year.



SUCCESS

Legislators delayed appropriating money from marijuana taxes until it was actually collected.

Marijuana legalization was sold to voters, in part, as a way to build schools. However, most of the money raised from marijuana taxes is being used for marijuana-related expenses, like public health and the regulatory structure.

Erroneous estimates of tax revenue and legislative spending decisions created this situation. If current tax-and-spending patterns hold, public support for legalization may weaken, and the legislature's spending decisions could be called into question.

LESSON FOUR

Bring in the Banks or Bank on Trouble

Banks are unwilling to work openly with marijuana businesses because possession and sale of marijuana remains a federal crime. Letters from the departments of Justice and Treasury attempted to offer guidance on how banks could deal with retail marijuana clients, but it did little to put bankers' fears to rest.¹⁵

As a result, most Colorado marijuana businesses are operating as cash-only enterprises or they're working with banks through a "don't ask, don't tell" relationship.^{16,17} Neither option is a sustainable long-term strategy. Dealing in cash makes businesses targets for crime. Also, cash transactions open the door to tax cheating, because businesses that deal in cash are harder to audit.

Colorado policymakers have gone as far as they can. House Bill 1398, passed in 2014, sought to create a financial cooperative for the retail marijuana industry. That co-op, called Fourth Corner Credit Union, has secured a charter from the Colorado Division of Financial Services. But it is waiting for the Federal Reserve Board of Governors to give it access to a master account — a necessity for any American bank. Most new banks receive a master account within days of their application. Colorado's co-op has been waiting since November 2014.

LESSON FIVE

This Is Not Your Grandfather's Marijuana

Today's marijuana is different from yesterday's. Colorado retail marijuana is two to 10 times more potent than the marijuana that has been used in health research.¹⁸ It also comes in newer forms such as edibles.

The marijuana industry and its regulators underestimated the consumer market for edibles. Some 2.85 million units of these marijuana-infused foods and beverages were sold in 2014.¹⁹

Because very few localities provide cannabis consumers a place where consumption is permitted outside the home, many Coloradans and tourists have turned to edibles as a more discreet way to get high, according to Jordan Wellington, an associate with Vicente Sederberg, a law firm that specializes in marijuana issues.²⁰

Colorado also underestimated the impact of edibles, which produce different physiological effects than smoked marijuana. For example, it can take up to four hours after ingesting edible marijuana to feel the effects of the THC, the drug's psychoactive ingredient.²¹

Initially, allowable dosages of THC for edibles were transferred directly from the medical market, which is meant to serve users who needed a convenient method for frequent consumption. Therefore, one small edible cookie or piece of candy may have contained up to 100 milligrams (mg) of THC. That amount is 20 times



SETBACK

Consumers, manufacturers and regulators were unprepared to deal with the surge of interest in edibles, which were created for frequent users who required high doses, not novice marijuana users.

the industry-recommended dose for a first-time user.²²

Some new and infrequent marijuana users have been prone to overconsuming edibles, given their delayed effects. Some may have also misunderstood — or ignored — the number of servings in a product.²³ Three deaths in the past year have been associated with edibles.

Vendors and producers soon realized the retail consumer market needed lower-potency products.

Retail rules limit edibles to 100 mg per package, with a maximum serving size of 10 mg. Edible producers have complied with the limits. Nearly all (98.2 percent) edibles tested in May 2014 were below state-mandated potency levels.²⁴

However, serving sizes were not readily apparent in some of the early retail products. For example, manufacturers produced 100 mg cookies that consumers would have had to split into 10 pieces in order to get a single 10 mg serving.

In response, businesses began offering lower potency products. Regulators, too, scrambled to keep pace. The 100 mg limit is still in place, but now products must be clearly marked and easily divided into servings no larger than 10 mg. Regulators also offer a relaxed testing regimen for products that contain no more than 10 mg of THC per package.²⁵

Some industry leaders have started educational efforts to help marijuana store employees assist different tiers of consumers — new, occasional and frequent — in selecting recommended dosages. Other education campaigns are aimed at consumers, such as “First Time 5,” which encourages novice marijuana consumers to ingest only five mg of THC for their first edible experience, and “Consume Responsibly,” which aim to bring awareness to the differences in ingesting versus inhaling marijuana and appropriate amounts to consume.^{26,27}

Another issue with edibles is that they often look just like regular food, even like candy. But addressing this issue has proved difficult. The legislature set a deadline of January 1, 2016 for rules on shaping or coloring edibles so they can be identified outside their packaging. A task force failed to find a way to do this. Legislators also turned down a bill (SB 15-136)²⁸ that would have repealed that requirement. There is still no viable way to distinguish edibles outside packaging, although the January 1, 2016, deadline looms.

Experts agree the data around accidental marijuana ingestion in children is limited, but that it warrants further study. Some early indicators are troublesome.

The Rocky Mountain Poison and Drug Center received 45 calls in 2014 about children under nine years old being exposed to marijuana, up 66 percent from 27 calls in 2013.

Colorado children under nine were hospitalized for possible marijuana exposures at a rate of 26.4 per 100,000 in the first six months of 2014, an increase of nearly 250 percent from the hospitalization rate of 7.6 per 100,000 between 2010 and 2013, according to data from the Colorado Hospital Association. Still, possible marijuana-related issues accounted for one percent or less of all hospital and emergency department visits during this time period.²⁹

Public health experts have suggested child-resistant packaging and education on safe storage to avoid accidental ingestion among the youngest Coloradans.³⁰

LESSON SIX

We Know What We Don't Know About Health

The legal status of marijuana changed faster than the knowledge about its health effects. Still, some early work is being done to institute population-level protections.

The Colorado legislature created the Retail Public Health Advisory Committee in 2014 to study and assess available scientific research on the health effects of marijuana. The committee issued its initial findings in January 2015. The committee warned about the dangers of using marijuana during pregnancy. It also said that occasional users who consume more than 10 mg of THC are likely to be too impaired to drive a car or ride a bicycle. The report also cited issues with memory problems and chronic bronchitis among frequent users.

Legislators, meanwhile, are acting on this research. One bill in the House, for example, would require retailers to warn pregnant women of the risks of consuming marijuana.³¹

But the research into the health effects of marijuana has many gaps. More study is needed on:

- Differing effects on heavy, regular and occasional users.
- Effects of the higher potency marijuana available in Colorado today.
- Changes in use patterns among all ages in states when marijuana is legalized. Health surveys due later this year should help answer this question.

In the absence of solid public health knowledge, educational campaigns such as “Good to Know” have focused on raising awareness about the few health impacts that are already known and increasing understanding of the law.³²

Conclusion

A year after the first legal retail sales of marijuana, Colorado can point to successes and setbacks in creating a new market and regulatory structure for a previously illegal product. But it's too soon to render a final judgment on whether legalization has been a success.

Health surveys due later this year should shed more light on the effect of legalization on use patterns. And another year of business experience will give legislators a clearer picture of the potential for tax revenue.

Colorado policymakers have been reluctantly pulled into the role of international experts on marijuana legalization. Soon, however, Colorado will be able to draw on the experience of other states such as Alaska, Oregon and Washington to add to its own lessons.

Colorado policymakers appear to be asking the right questions. Now they need time to get the answers.



Mature marijuana plants are ready for harvest in a grow room at Colorado Harvest Company in Denver. BRIAN CLARK/CHI



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